

**Title: A Case Study on Customs Trade Facilitation at Zambia's
Kasumbalesa Border Post**

A Dissertation

Presented to

The Graduate School of Business

University of Cape Town

**In fulfilment of the requirements for the degree of
Master in Commerce in Trade Law and Policy**

By

Moses Lameck Mfuné (MFNMOS002)

Date: 16th February, 2015.

Supervisor: Professor Gerhard Erasmus

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Abstract

The expansion of global trade, especially trade in intermediate products, compels goods to cross borders multiple times before assembly. This phenomena requires better trade facilitation mechanisms in conveyancing goods and people across borders. The World Customs Organization, among many other organizations, has been in the fore-front of promoting these trade facilitation techniques.

This qualitative case study has an objective of analyzing the current trade facilitation techniques used at Kasumbalesa. It also aims at pointing out any outdated customs procedures. During the study, data was collected using questionnaires and oral interviews. Secondary data was also collected from publications of the World Customs Organization, World Bank and the World Trade Organization, among other sources. In addition, observational methods were also used to collect data.

The case study focuses on Kasumbalesa as a representative entry/exit point in Zambia. Consequently, identification of challenges faced by goods and people crossing Kasumbalesa can help streamline operations at other Zambian borders.

The results of the study discloses some inconsistencies in the manner trade facilitation measures are carried out at Kasumbalesa, in comparison to international standards. Despite the fact that various trade facilitation techniques are being implemented at Kasumbalesa, empirical indications show that much more has to be done.

Consequently, Kasumbalesa should strive to adopt modern border management techniques to enhance trade, and implement them correctly. These techniques should include the Single Window and the Coordinated Border Management mechanisms. Application of such techniques will also require augmentation by transparent and predictable rules.

Improving facilitation at Kasumbalesa and subsequently at other Zambian borders, can confer benefits to the country. Some of the benefits can come through increased local and Foreign Direct Investments. Such investments can increase competition among Zambian economic actors. In return, increased competition can lead to efficiencies in Small Medium Enterprises. The upcoming enterprises are instrumental in job creation in Zambia and they usually play a major role in alleviating poverty.

Table of Contents

| | |
|---|----|
| Abstract..... | 1 |
| Table of Contents..... | 2 |
| List of Figures | 4 |
| List of Tables | 5 |
| Glossary..... | 8 |
| 1.0 Introduction | 12 |
| 1.1 Research Problem | 13 |
| 1.2 Hypothesis and Research Questions..... | 13 |
| 1.3 Limitations..... | 13 |
| 1.4 Significance of Study | 14 |
| 1.5 Dissertation Outline | 14 |
| 2.0 Methodology..... | 16 |
| 3.0 Literature Review | 19 |
| 4.0 Research Findings | 24 |
| 4.1 Introduction | 24 |
| 4.2 Institutional and Legal Framework of Trade Facilitation | 24 |
| 4.3 The United Nations, its agencies and Trade Facilitation..... | 24 |
| 4.4 The World Trade Organization (WTO) | 26 |
| 4.4.1 The WTO Trade Facilitation Agreement (TFA) | 27 |
| 4.5 The World Customs Organization (WCO) | 30 |
| 4.6 Trade Facilitation in the Southern African Region | 31 |
| 4.7 Background to the DRC and Zambian Trade..... | 34 |
| 4.8 KSU Clearance Procedures | 37 |
| 4.9 Transit Trade at KSU Border Post..... | 49 |
| 4.10 Trade Transaction Costs at KSU | 53 |
| 4.11 Cost Implication of Trade Delays and Related Challenges..... | 60 |
| 4.12 Customs, Corruption and Trade Facilitation | 65 |
| 4.13 Border Agencies and Coordination at KSU | 69 |
| 4.13.1 Intra-Customs Cooperation..... | 70 |
| 4.13.2 Inter-Agency Cooperation..... | 71 |
| 4.13.3 Cross-Border Cooperation at KSU | 72 |

| | | |
|--------|---|----|
| 4.13.4 | The OSBP Concept..... | 74 |
| 4.14 | WCO Best Practices and KSU Customs Operations..... | 76 |
| 4.14.1 | The Harmonized Commodity Description and Coding System | 76 |
| 4.14.2 | The RKC | 76 |
| 4.14.3 | The Single Window Mechanism..... | 80 |
| 4.15 | Trade Facilitation and Its Benefits | 83 |
| 4.16 | Concluding Remarks..... | 86 |
| 5.0 | Conclusion and Recommendations..... | 87 |
| 5.1 | Trade facilitation challenges | 87 |
| 5.1.1 | Inadequate legislation as a Trade facilitation challenge..... | 88 |
| 5.2 | Recommendations | 88 |
| 5.3 | Future Research | 89 |
| | References | 90 |
| | Appendix I | 96 |

List of Figures

| | |
|---|-----------|
| <i>Fig. 1 The directional dependence of ontology, epistemology and methodology.....</i> | <i>15</i> |
| <i>Fig. 2 Trade Facilitation linkages with other trade policies.....</i> | <i>21</i> |
| <i>Fig. 3 Clearance of cargo destined to DRC.....</i> | <i>38</i> |
| <i>Fig. 4 Clearance of cargo from DRC at Zambia's Kasumbalesa border post.....</i> | <i>41</i> |
| <i>Fig. 5 Kasumbalesa Time of Importation</i> | <i>45</i> |
| <i>Fig. 6 Importation and Exportation costs by component in Zambia in 2012.....</i> | <i>60</i> |
| <i>Fig.7 Zambia's Trade Facilitation performance: OECD Indicators.....</i> | <i>61</i> |
| <i>Fig. 8 Balancing Facilitation and Controls.....</i> | <i>76</i> |
| <i>Fig. 9 Single Window Mechanism.....</i> | <i>80</i> |
| <i>Fig. 10 Intermediate Products importation into Zambia in selected periods.....</i> | <i>82</i> |
| <i>Fig. 11 Zambia and trade Facilitation.....</i> | <i>84</i> |

List of Tables

| | |
|---|-----------|
| <i>Table (1) Case selection techniques.....</i> | <i>16</i> |
| <i>Table (2) Trade Performance between Zambia and Democratic Republic of Congo</i> | <i>33</i> |
| <i>Table (3) Zambian Documentary Requirements.....</i> | <i>37</i> |
| <i>Table (4) Types of Clearances made at Kasumbalesa Border Post in 2013.....</i> | <i>41</i> |
| <i>Table (5) Agricultural documentary requirements at KSU border post (Zambian side) ..</i> | <i>56</i> |
| <i>Table (6) Kasumbalesa Risk profiles</i> | <i>78</i> |

Plagiarism Declaration

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is your own.
2. I have used a recognized convention for citation and referencing. Each significant contribution and quotation from the works of other individuals has been attributed, cited and referenced.
3. I certify that this submission is all my own work.
4. I have not allowed and will not allow anyone to copy this essay with the intention of passing it off as their own work.

Signature: Moses Lameck Mfuné

Date: 16/02/2015

| |
|---------------------|
| Signed by candidate |
|---------------------|

Acknowledgements

I hereby acknowledge the support I got from my supervisor Professor Gerhard Erasmus as well as from my family especially my wife who supported me throughout this project. That support was vital for this project to get to fruition. I equally wish to express my gratitude to the Trade Law Centre (TRALAC), especially to the Executive Director Trudi Hartzenberg and her staff for the support, guidance and encouragement during my studies. In addition, I wish to extend my gratitude to the staff of the Graduate School of Business (Cape Town University) especially to Ellanca Shelly for her guidance. Lastly but not least, I also wish to thank the 2013 MCOM class for sharing knowledge with me, as well as to Zambian public and private economic actors for availing data during the course of study.

Glossary

| | |
|---------|--|
| AEO | Authorized Economic Operator |
| ASYCUDA | Automated System for Customs Data and Automation |
| AW | ASYCUDA World |
| BOZ | Bank of Zambia |
| CB | Customs Broker |
| CBM | Coordinated Border Management |
| COMESA | Common Market for Eastern and Southern Africa |
| CSO | Central Statistics Office |
| DRC | Democratic Republic of Congo |
| EAC | East African Community |
| ECA | Economic Commission for Africa |
| FDI | Foreign Direct Investment |
| FTA | Free Trade Area |
| GATT | General Agreement on Trade and Tariffs |
| GMO | Genetically Modified Organisms |
| GVCs | Global Value Chains |
| HS | Harmonized Commodity Description and Coding System |
| ICT | Information Communication Technology |
| ISO | International Standards Organization |
| ITC | International Trade Center |
| KSU | Kasumbalesa |
| LDC | Least Developed Country |
| MFN | Most Favored Nation |
| MNC | Multi-National Corporation |
| MS | Member States |
| NTB | Non-Tariff Barrier |

| | |
|------------|--|
| OECD | Organization for Economic Cooperation and Development |
| OFIDA | Congolese Customs and Excise |
| OSBP | One Stop Border Post |
| PCA | Post Clearance Audit |
| RCTG | Regional Customs Transit Guarantee |
| RKC | Revised Kyoto Convention |
| RTSA | Road Transport and Safety Agency |
| SAD | Single Administrative Document |
| SADC | Southern Africa Development Community |
| SCCC | SADC Sub-Committee on Customs Cooperation |
| SDT | Special and Differentiated Treatment |
| SMEs | Small Medium Enterprise |
| SPS | Sanitary and Phytosanitary Measures |
| TFA | Trade Facilitation Agreement |
| TTCs | Trade Transaction Costs |
| UNECE | United Nations Economic Commission for Europe |
| UNCEFACT | United Nations Center for Trade Facilitation and Electronic Commerce |
| UNCTAD | United Nations Congress for Trade and Development |
| UN/EDIFACT | United Nations Electronic Data Interchange for Administration, Commerce and Transport |
| WB | World Bank |
| WCO | World Customs Organization |
| WTO | World Trade Organization |
| ZABS | Zambia Bureau of Standards |
| ZARI | Zambia Agriculture Research Institute |
| ZRA | Zambia Revenue Authority |

Directory of Cases

Canada – Alcoholic Drinks, BISD 39S/27

EEC – Program of Minimum Import Prices, Licenses and Surety Deposits for Certain Processed Fruits & Vegetables, BISD 25S/68

Japan - Restriction on Imports of Certain Agricultural Products, BISD35S/163

United States – Customs User Fee, BISD 35S/245

List of Treaties and Instruments

SADC Protocol on Trade 1996

The COMESA Treaty

The Customs and Excise Law of Zambia (CAP 322)

The General Agreement on Tariffs and Trade (GATT) of 1994

1.0 Introduction

Prospects for today's trade-led development rely on simplified and transparent regulatory systems in addition to efficient trade procedures. Consequently, there is need for Kasumbalesa (KSU) customs on the Zambia/DRC border to understand the forces driving international trade. Such knowledge can help in devising appropriate trade policies that reduce Trade Transaction Costs (TTCs), which in turn determine trade performance and national competitiveness. Procedures that facilitate trade are seen universally to be important for economic progression.

Trade facilitation's importance is increasing, because it is seen as an international public good, due to the rise in regional trade agreements and the shift in global trade towards intermediate products. Currently, trade at KSU involves merchandise passing through two unique national customs controls. Administrative procedures permit conveyancing, but some current procedures and formalities impose unnecessary costs. The KSU cross-border trade transactions also involve many parties and disparate documentation that add to TTCs.

This study, therefore, reviews the current trade facilitation measures at KSU. The measures reviewed include procedures, systems, regulations and documentation among others. The streamlining of procedures, regulations and systems can cut TTCs. The reduction in TTCs may in turn lead to improved competitiveness of Zambian firms and export growth. The study was accomplished by observation, gathering information from key stakeholders and by qualitative research on border management practices.

1.1 Research Problem

International trade at KSU is restricted by many factors including outdated customs procedures and the mandatory requirement for numerous and costly documentation. The problem of crossing KSU is further compounded by the existence of numerous government agencies, corruption and the restrictions on border opening hours among other factors. This in turn affects economic growth¹.

Many international organizations, such as the World Customs Organization (WCO) provide best practices that can be followed by countries when trading with others. However, Zambia's KSU border post struggles in implementing international best practices as well as national rules.

This study, therefore, describes and explains challenges of facilitating trade at KSU by existing customs practices, procedures and regulations. The study also looks at possible solutions and how customs procedures compare with global best practices.

1.2 Hypothesis and Research Questions

This study is based on the proposition that current trade facilitating measures at KSU are inadequate. Despite the presence of automated systems of customs clearance, lack of Government agencies' cooperation and non-implementation of some international and national rules, cause inefficiencies in cross-border movement of people as well as goods. Some of the above-mentioned challenges arise from improper training of personnel and the usage of archaic customs methods. Hence, this study seeks to answer the following questions:

- (i) How is trade facilitated at KSU? and
- (ii) How can trade facilitation be improved at KSU border post?

1.3 Limitations

The study had limitations in that it targeted the Zambian side of the KSU border post. Only a few issues were analyzed with regard to the Congolese side of the border. This was the case because a One Stop Border Post (OSBP) mechanism does not exist at KSU. Nonetheless, some information on KSU-Congo operations was still accessed through

¹ According to World Bank (2014a) statistics, Zambia's economic growth averaged six percent in the last decade while international trade has been expanding due to foreign direct investments especially in mining. However, the OECD (2014) point to various border hurdles as restraints for further expansion of Zambia's international trade.

discourses with stakeholders such as traders. This study was also limited by lack of time and other resources. This put a ceiling on the number of interviews carried out. Lastly, non-accessibility of some stakeholders caused some limitations too.

1.4 Significance of Study

The intent of this study is to identify trade facilitation challenges at KSU, with a possibility of devising mechanisms to resolve them. According to the World Bank (WB), Zambia's Trade to Gross Domestic Product Ratio was 80% in 2012, highlighting the importance of trade to the Zambian economy². Therefore, existence of any trade related challenges at KSU, has a negative impact on movement of exports, imports and transit goods whose value exceed US\$ 16 billion per year (Zambia Revenue Authority (ZRA), 2014). By contrast, facilitating trade is vital because it lowers TTCs on import, export and transit goods. These TTCs tend to be high in landlocked countries such as Zambia. It is therefore important to identify and resolve challenges that slow movement of goods and people across the KSU border. The study is also significant because proper facilitation of trade can help in attracting Foreign Direct Investment (FDI) into Zambia. This can lead to integration of the country into the global economy. A globally integrated national economy may be important, because Zambian firms can increase their participation in Global Value Chains (GVCs) resulting in increased volume of exports. This in turn can bring benefits by eliminating poverty in the nation.

1.5 Dissertation Outline

Chapter Two

The second chapter addresses the methodology used in this study. Qualitative methods were relied upon while primary methods through interviews were also employed. Additionally, secondary data was gathered from reputable global institutions involved in promoting trade facilitation to accomplish the work.

² See <http://data.worldbank.org/data-catalog/world-development-indicators>

Chapter Three

The third chapter gives a review of literature about trade facilitation. It focuses on current global methods of facilitating trade and also highlights the importance of trade facilitation.

Chapter Four

The fourth Chapter addresses the findings of the study. It gives some background on major international organizations that promote trade facilitation. It also gives some background on trade between Zambia and the DRC. The chapter goes on to discuss the current challenges of facilitating trade at KSU before highlighting the benefits of trade facilitation to Zambia.

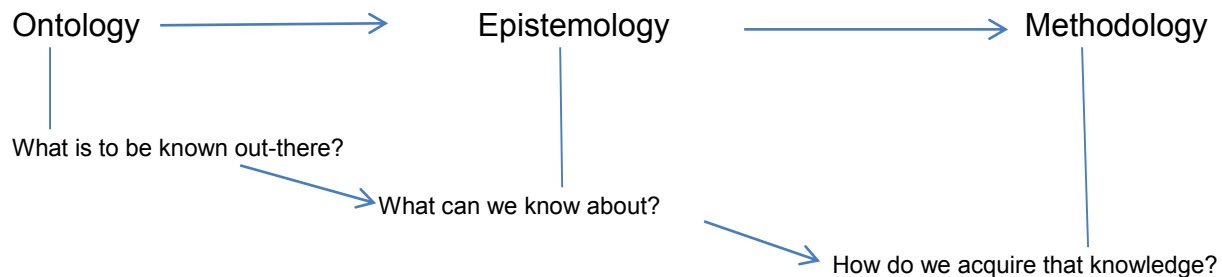
Chapter Five

The last chapter concludes this dissertation and summarizes the findings of the study. The fifth chapter also makes some recommendations based on the identified problems at KSU.

2.0 Methodology

In order to provide solutions to the research questions, this study used a methodology premised on specific ontology and epistemology. Ontology and epistemology preceded methodology in the analysis with the relationship between the trio being not only close but directional (Hay, 2002). This relationship is as highlighted in Figure1 below;

Fig.1: The directional dependence of ontology, epistemology and methodology



Source: Hay (2002: P64)

The design of this study, as alluded to above, is based on Fig.1 and qualitative methods of research were relied upon. Qualitative research is described as a set of non-statistical techniques of inquiry used to collect data on social phenomena (McNabb, 2004). According to McNabb (2004), qualitative research is flexible and tends to approach topics with little if any assumptions. It was therefore vital that this study's assumptions began forming only when the analysis of collected data started.

McNabb (2004) also asserts that when seeking to comprehend processes, case study qualitative research methods focus on situations that occur within an organizational context. This is the exact principle that was used in this case study.

McNabb (2004) further states that case study strategies can target an organizational unit, rather than deal with the whole organization. The prominent feature of such a strategy is that it endeavors to scrutinize a phenomenon in its real-life context (McNabb, 2004). Such strategies avails a selected case, as a definitive state of an institution, and in the process serves as an example for similar units (McNabb, 2004). This, therefore, is a good criterion in investigating institutional processes because the results of a case study may have potential for a broader context application.

The single case methodology was selected for this study, because present dynamics of the subject under review needs comprehension within a specific context. The general case selection technique, in line with current literature, is as highlighted in Table 1 below:

Table 1: Case Selection Technique

| Typical Cases | |
|---------------------------|---|
| Definition | Cases are typical examples of cross-case relationships. |
| Uses | Testing Hypothesis |
| Representativeness | The typical case is representative in nature |

Source: Adapted from Gerring (2008: P647)

Case studies may test hypotheses or could be of a representative type as described in Table 1 above. The results of a case study can be used in various ways including confirmation of existing hypotheses, or in reframing hypotheses consistent with findings among other uses (Gerring, 2008:P650).

In this study, KSU was taken as a typical case with the objective of availing the border as a post representing similar entry and exit points in Zambia. Consequently, it is contended that trade facilitation measures at KSU, is an appropriate representative of trade facilitation measures at other entry/exit points in Zambia. The broader phenomenon under review is facilitation of trade at the country's border posts. Findings of the study may help in confirming the fact that trade facilitation is below par at Zambian border posts or vice versa.

The study drew data from multiple sources including primary, secondary sources and direct observations³. A good amount of data was especially accessed from archival records and interviews. The observational evidence was used in evaluating the effects of customs processes on trade facilitation at KSU. The documentary secondary sources enabled production of an overview of trade facilitation as expounded by GATT 94 and in regional and national regulations. In addition, secondary sources especially from the WB, WCO and the Organization for Economic Cooperation and Development (OECD) publications were used. The study also entailed visiting the KSU border post in order to conduct interviews (oral/questionnaires) with relevant stakeholders. The interviews targeted Customs Brokers (CBs), customs officials, businessmen, government officials and other private sector economic actors in order to provide rigor to the study outcome.

³ Most secondary data sources were accessed from WB, Economic Commission for Africa (EAC) and from the OECD publications. These sources were especially chosen because of their reputation which in turn gave some validity to the study.

Other interviews were conducted in Lusaka at customs head office and at various government ministries' head offices.

In summary, the methodology emphasized dependence on qualitative research, and also justifies usage of a single case study approach to finding answers to the trade facilitation problems at KSU in particular and Zambia in general.

3.0 Literature Review

Trade facilitation is a multifaceted subject, which includes management sciences such as logistics and strategy. It blends legal disciplines (trade law and customs) and it also encompasses the political-economic fields of public administration and international relations (Grainger, 2008). According to the WTO (2001), as cited by Bolhofer (2007), trade facilitation is defined as:

‘..the simplification and harmonization of International trade procedures, including activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade’

The GATT94 has three provisions that aim at facilitating global trade namely, Article V (*Freedom of Transit*), Article VIII (*Fees and Formalities*) and Article X (*Publication and Administration of Trade Regulations*). The above-mentioned provisions have been a subject of discussion by WTO contracting parties since 1996, due to inadequacies and lack of clarity (International Trade Center (ITC), 2013). The shortcomings highlighted above drove the WTO’s 9th Ministerial Conference to reach a Trade Facilitation Agreement (TFA) on 7th December 2013, with significant expansion of the three articles into about twelve new ones. The TFA consists of two parts, with the first part dealing with trade facilitation and obligations. The second part deals with Special and Differentiated Treatment (SDT).

At regional level, the Common Market for Eastern and Southern Africa (COMESA) under chapter six also promotes trade facilitation. In particular Article 45 (Trade liberalization) and Article 49 (elimination of Non-Tariff Barriers (NTBs)) of chapter six are about trade facilitation. In addition, the trade protocol of the Southern African Development Community (SADC) in Article (VI) equally targets removal of NTBs among Member States (MS). Lastly, the Tripartite Free Trade Area (TFTA) also provides for elimination of these trade impeding measures in Article (X) (I), which states that:

‘Tripartite member states shall eliminate all existing non-tariff barriers to trade with each other and shall not impose any new ones’⁴

NTBs such as the lack of coordination between border agencies and within the individual agencies tend to promote duplications thereby hampering trade facilitation. Trade facilitation is also impeded by such NTBs as inefficient customs procedures and excessive documentation requirements. Corruption and poorly trained staff are other forms of NTBs that produce negative effects on smooth movement of goods and people across borders. In addition to the trade facilitating impediments mentioned above, restrictive border operational hours and ambiguous legislation have a tendency to curb trade facilitation too. Consequently, eliminating such NTBs at border crossing points is paramount if the efficient conveyancing of goods and people across borders has to be achieved. Further, complicated processes and duplicated procedures at border points should be eliminated or replaced with simple harmonized systems. Interventions like the ones mentioned above are necessary for trade facilitation at borders such as KSU.

Trade facilitation has grown in importance because of globalization and the reduction in tariff rates across the world. This has led to an exponential growth in the volumes and value of merchandise crossing international borders (Grainger, 2011). The increase in merchandise is compounded by GVCs formation due to intermediate products trade. These intermediate products cross borders multiple times before final assembly (Sally, 2013). The process of crossing borders imposes costs due to various interventions by Government agencies and numerous private intermediaries like CBs (Grainger, 2008). In addition, lack of coordination and automation among government bodies also impose extra costs that are felt throughout the trading chain (Pearson, 2011).

These costs are especially high in African countries such as Zambia due to many factors, chief among them, poor infrastructure and complicated customs procedures (ECA, 2004). Further, poor relationships between customs authorities and traders have cost implications too, resulting in poor performances (Buyonge & Kireeva, 2008). The costs

⁴ The regional economic groupings in eastern and southern Africa under TFTA have even come together to establish an online reporting mechanisms for NTBs accessible at www.nontariffbarriers.org. The site’s main objective is to promote trade facilitation by eliminating hurdles in the trading chain.

associated with improper trade facilitation in Africa are large and estimates put them in billions of dollars (OECD, 2004). Improper facilitation causes Governments to lose revenues, while firms tend to incur direct costs caused by delays (demurrage charges), and indirect costs due to lost business opportunities. Other additional costs to firms stem from uncompetitive products, made using delayed inputs or through holding of high levels of inventories. Consumers are therefore made to pay more for merchandise due to TTCs thereby reducing their purchasing power.

Consequently, customs administrations need to balance trade regulatory measures with objectives that facilitate trade (Widdowson, 2005). This requires employment of global best practices, such as risk management techniques that help in deploying resources to higher risk areas. There is also need to improve inter-agency and intra-agency cooperation at border posts as a way of eliminating unnecessary duplications (Pearson, 2011). However, in the case of Zambia's KSU border post, there are eleven different government departments implementing different pieces of legislation. Eight of these agencies have powers to detain goods or vessels under their own terms. This goes against the tenets of trade facilitation.

Buyonge & Kireeva (2008) claim that trade facilitation guarantees better economic progression than benefits accruing from tariff reductions. This is supported by Hoekman & Shepherd (2013), who claim that trade facilitation can eliminate resource wastage by avoiding duplications. The above observations reinforce the importance of trade facilitation to Zambia, which has a high trade-to-gross domestic product ratio.

Nonetheless, some trade facilitation measures cost money and Zambia needs to deploy innovative strategies at KSU to achieve higher compliance levels. This can be achieved through use of measures such as preferential treatment of reputable businesses, reduction in required documentation and by disseminating information related to trade (OECD, 2013). Such an approach to regulating trade may enable authorities to focus on high risk areas, resulting in efficient use of resources and detection of non-compliant traders (Widdowson, 2005). Use of such techniques permit compliant traders' increased facilitation leading to expedited trade and travel with attendant benefits. Unfortunately, such management techniques are not in full use at KSU border post.

New border management techniques have also been developed by the WCO, through the Revised Kyoto Convention (RKC) of 1999. These encourage international best practices in trade facilitation, by promoting harmonization and standardization of customs procedures. Many of the standards in the RKC are compatible with WTO trade facilitating instruments mentioned above. These standards are useful in facilitating trade, which in turn is indispensable, in integrating Least Developed Countries (LDCs) like Zambia into the global economy.

According to Radelet & Sachs (1998), trade facilitation also promotes FDI. This is because Multi-National Corporations (MNCs) have a tendency of locating production facilities in countries whose customs services are efficient. The OECD (2005) contradicts this assertion with an observation that even in the absence of trade facilitation, resource-seeking FDI can locate facilities in appropriate areas. Nonetheless, timely customs clearance of goods coupled with transparency, predictability and a general reduction in trade delays can promote FDI flows into Zambia resulting in numerous benefits to the country (Hellqvist, 2003).

The OECD (2013) further claims that Zambia has been making strides in facilitating trade through improved information availability, document simplification and by automating some customs procedures. By contrast Ngo'na & Dube (2012) contend that the nation's publication of information to the public is inadequate and that customs procedures remain complicated. In like manner, the ECA (2013) claims that Zambian firms need about seven documents to export and eight documents to import. These requirements work against trade facilitation and have a tendency of increasing TTCs for Zambia as compared to similar countries (ECA, 2013).

Zambia needs to recognize the importance of trade facilitation as a tool for economic development which she should embrace (Grainger, 2011). Trade facilitation should be used through linkages with other policies such as private sector development and export promotion (United Nations Congress on Trade and Development (UNCTAD), 2010). The possible linkages are as highlighted in figure 2 below:

Fig. 2 Trade Facilitation Linkages with other Trade Policy Goals



Source: UNCTAD (2010)

Figure (2) above shows that trade facilitation promotes competitiveness and can lead to improved export performance. It also reinforces the need for reforming regulatory and administrative procedures in order to cut business costs. Strengthening the linkages among the various options mentioned above can lead to optimal economic outcomes. In addition to the highlighted benefits, trade facilitation is a powerful poverty reduction tool (Rippel, 2011).

4.0 Research Findings

4.1 Introduction

The third chapter defined trade facilitation besides looking at regional and global organizations that promote trade facilitation. It equally highlighted measures being carried out collectively by COMESA, SADC and the EAC to eliminate NTBs that stifle trade. The growth and importance of trade in intermediate products was also discussed. The chapter observed that inadequate trade facilitation measures tend to generate high TTCs that prevent firms' growth which in turn stifles economic progression. The review of literature also pointed to outdated customs procedures and lack of coordination in borders as factors that contribute to border crossing complications. In addition, the large number of documentation that are required in borders was found not to be helpful to the trade facilitation cause.

This chapter begins by giving some background to institutional framework in trade facilitation. It highlights some international instruments that require employment in facilitating trade at borders like KSU. It also discusses the TFA listing some suggested instruments that could be used to facilitate trade in the near future. The chapter goes on to discuss the current methods and the challenges of facilitating trade at KSU highlighting some consequences of these challenges.

4.2 Institutional and Legal Framework of Trade Facilitation

The United Nations has various agencies involved in trade facilitation, such as the United Nations Commission for Europe (UNECE) and its affiliates; UNCTAD; as well as the International Maritime Organization. In addition, the WTO, the WCO, the International Chamber of Commerce, and the WB, among others, have functions aimed at international trade facilitation.

4.3 The United Nations, its agencies and Trade Facilitation

The UNECE plays a central role in developing global trade facilitating measures through its affiliates such as the United Nations Center for Electronic Business and Trade Facilitation (UN/CEFACT); the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) and the International Road Transport (TIR 1975) Convention. The TIR avails a platform for simple transit regimes to nations that have signed up with the agreement, as a way of expediting transit traffic movement at minimal cost.

The UN/CEFACT focuses on simplification and harmonization of national and international commerce, as well as on the flow of information. It has developed a series of trade facilitating measures and e-commerce standards for international trade. These tools have been adopted by many nations' business firms, as a way of reducing TTCs because they reflect best practices. For instance, the UN Layout Key is a vital standard for paper documents, because it prescribes an international model for the design of international trade documents. In addition, the UN/CEFACT has been instrumental in recommending the use of Single Windows systems in international trade (Grainger, 2008).

On the other hand, the UN/EDIFACT promotes standards for electronic documentation and data exchange. The UN/EDIFACT has produced global standards on databases and provides guidance on digital-data exchange-mechanisms. These various aforementioned trade facilitation measures undergo constant reviews and are continuously updated to reflect changes in international commerce. Some of the recommendations made by these agencies are aimed at reducing complexity in the trading system, while others have the objective of harmonizing and simplifying trade procedures.

UNCTAD is another specialized agency of the UN that helps in promoting international trade. UNCTAD has been instrumental in the development of various versions of the Automated System for Customs Data and Automation (ASYCUDA), which system is currently used at KSU. This customs management tool allows customs declaration processing, handles manifests, applies risk management techniques, processes transit documents and also performs accounting procedures.

In order to ensure standardization in the trading chain at international level, the International Standards Organization (ISO), has set up a wide range of standards related to trade documents. This can be seen in the ISO 6422 standard for trade documents that conform to the UN Layout Key, and in the ISO 8440 standard that stipulates the location of codes in trade documents. Standardization of trade documents contributes to TTCs reduction, by making them simple, uniform and familiar in international commerce (Du Plessis, 2014).

4.4 The World Trade Organization (WTO)

The WTO is one other international body with significant influence in facilitating global trade. Three Articles in the General Agreement on Trade and Tariffs (GATT 94) namely Articles V, VIII and X have a core function of facilitating trade. However, WTO contracting parties identified some inherent weaknesses in the articles. This factor led the Singapore Ministerial Conference of 1996 to prioritize revisions to the trade facilitation instruments as a way of promoting multilateral trade. Subsequently, trade facilitation was also discussed at the Doha Ministerial Conference in 2001. Trade facilitation later became part of the multilateral trade negotiations in 2004, after a decision by the WTO General Council. The scope of the negotiations included fees, documentation, procedures, formalities and rules to guide import, export and transit processes. The trade facilitation negotiations were aimed at improving the three GATT 94 Articles highlighted below:

(i) Freedom of Transit (GATT 94 Article V)

This article's main objective in the WTO is to prevent any hindrance to transiting traffic, through elimination of restrictions or charges that are not commensurate with services provided. It also aims at giving Most-Favored Nation (MFN) treatment to all transit goods of WTO contracting parties⁵. This provision is particularly important to landlocked countries such as Zambia.

(ii) Fees and Formalities connected with Importation and Exportation (GATT Article VIII)

The article's main objective is to reduce costs and simplify import and export processes. The provision stipulates that WTO contracting parties should impose border fees that are proportional to services rendered. The provision also calls for penalties meted out to traders by government authorities, to be proportional to the seriousness of violations. This provision has seen numerous litigations amongst contracting states.⁶

⁵ Various WTO contracting parties have made complaints about violation of Article V of GATT 94 but disputes have been resolved before commencement of proper litigation (WTO Secretariat 2002, G/C/W/408).

⁶ Refer to EEC – Minimum Import Prices, BISD 25S/68 & US – Customs User Fee, BISD 35S/245

(iii) Publication and Administration of Trade Regulations (GATT 94 Article X)

Article X (I) requires publication of trade related information so that it is accessed by various stakeholders, which factor enhances trade. In Article X (II), GATT94 calls for rules to be implemented only after publication and consultations as a way of promoting transparency, thereby discouraging corruption. Article X (III) (a) and Article X (III) (b) oblige WTO contracting parties to be impartial when administering laws, and to have appeal structures, such as appeal tribunals, to review administrative decisions respectively. GATT 94 Article X was designed to promote transparency and good governance. Knowledge and information on rules that govern trade are a prerequisite in trade facilitation. The availability of such information helps in reducing corrupt practices, and is especially important to small scale traders who receive the greatest impact. There have been numerous disputes revolving around this provision in the WTO. One panel made a ruling that WTO contracting parties are not obliged to make trade related information simultaneously available to domestic and foreign firms.⁷

After many years of protracted negotiations in the WTO, MS expanded the above-mentioned provisions. This led to the Multilateral TFA at the Bali Ministerial Conference on December, 7th 2013.

4.4.1 The WTO Trade Facilitation Agreement (TFA)⁸

The TFA consists of two parts, with the first part addressing trade facilitation measures. The second part is concerned with Special and Differential Treatment (SDT) for developing countries as well as LDCs. The Trade Facilitating part is arranged in twelve articles as highlighted below:

Article (I): Publication and Availability of Information;

Article (II): Prior Publication and Consultation;

⁷ Refer to Canada – Alcoholic Drinks, BISD 39S/27

⁸ The protocol for the new TFA was supposed to be adopted by July 31st 2014, however this was not achieved. The protocol in question was designed to be open for acceptance until July 2015, while entry into force of the TFA will only take place once two-thirds of the WTO contracting parties ratifies it.

Article (III): Advance Rulings;

Article (IV): Appeals;

Article (V): Other Measures to enhance impartiality, non-discrimination and transparency;

Article (VI): Disciplines on Fees and Charges imposed on or in connection with importation and exportation;

Article (VII): Release and Clearance;

Article (VIII): Border Agency Cooperation;

Article (IX): Movement of Goods under Customs control intended for importation;

Article (X): Formalities connected with importation, Exportation and Transit;

Article (XI): Freedom of Transit; and

Article (XII): Customs Cooperation.

The first five Articles of the TFA are about transparency and they are an expansion of GATT 94 Article (X) (ITC, 2013). On the other hand, the TFA's Articles (VI) to (XII) expand the GATT 94 provisions in Article (V) & (VIII), with an emphasis on reducing TTCs as well as simplifying formalities. Freedom of transit provisions in GATT 94 are further expanded in Article 11 of the new TFA which repeats the GATT 94 Article (V) provisions, in addition to the following new ones:

- Separation of transit traffic during border clearance;
- Reducing the burdens on documentation requirements and customs controls on traffic in transit;
- Goods under transit procedures should not be subjected to further customs controls until they conclude their transit in a MS's territory;
- Allowance for advance filing and processing of transit documents;

- Prompt termination of transit operations by MS when traffic reaches its destination; and
- Obliging MS to discharge any guarantee promptly upon completion of the transit journey.

In addition, the TFA expects MS to cooperate with each other to enhance freedom of transit. The above-mentioned articles require KSU to initiate new border business practices, like enhancement of automation and risk management techniques (ITC, 2013).

The TFA aims at making LDCs such as Zambia competitive through the expected reduction in TTCs which in turn determines FDI flows (Lamy, 2003). The FDI flows are particularly important for the diversification of the Zambian economy and eradication of poverty.

Additionally a binding TFA under the WTO has the effect of pushing countries like Zambia to implement and lock-in trade facilitation reforms once it enters into force. It will oblige Zambia to publicize information on documentation requirements for import, export and transit as well as on procedures (Kanyimbo, 2013). Likewise, information on duties, taxes and fees imposed in connection with importation, exportation and transit will equally need to be published. In like manner, information on appeal mechanisms and any restrictions will also need to be availed to the trading community (Kanyimbo, 2013). The above-mentioned measures can help in making Zambia's international trade predictable and transparent.

Compliance with the TFA will also require Zambia to use or to enhance usage of provisions in the RKC with regard to advance rulings, pre-clearances and Post Clearance Audits (PCA)⁹. Similarly, the country will be required to establish mechanisms like Coordinated Border Management (CBM), and the single window system as a way of enhancing trade.

⁹ Zambia already uses PCA which is undertaken by the Business Risk and Audit Section of Customs.

4.5 The World Customs Organization (WCO)

The WCO is an inter-Governmental body, whose objective is to improve customs administrations' efficiencies. It develops and administers many international instruments, tools and standards, aimed at harmonizing and simplifying customs procedures that control cross-border movement of people and merchandise (Swedish National Board of Trade, 2009). The International Convention on the Simplification and Harmonization of Customs Procedures as revised in 1999 (RKC), is one of the most prominent international instruments developed by the WCO. The RKC convention promotes transparency, predictability and due processes in customs administrations of MS. The RKC also stipulates efficient customs formalities and procedures; promotes harmonization of customs documents besides promotion of risk management techniques.

In like manner the RKC promotes the optimal use of Information Communication Technologies (ICT) in Customs operations. In 2005, the WCO Council adopted the Framework of Standards to Secure and Facilitate Global Trade (SAFE). The objective was to protect international supply chains, besides facilitation of legitimate movement of people and goods across borders. One important feature of SAFE is the Authorized Economic Operators (AEO), which promotes minimal deployment of resources by customs to goods with low risk (Widdowson, 2005). This has the effect of freeing well known compliant corporate entities to conduct their business with minimum hindrance, while targeting non-compliant traders. The other RKC feature is the promotion of the use of non-intrusive inspection mechanisms by customs administrations¹⁰. In addition, the WCO is also the base of the Harmonized Commodity Code Description and Coding System (HS). The HS is a multi-purpose international product nomenclature tool that provides some universal economic language and coding for goods. This tool helps in leveraging trade facilitation.

The WCO also promotes integrity as a way of removing bottlenecks in the trading chain (Mikuriya, 2003). The Arusha Declaration of 1993 identifies measures to prevent corruption, and to increase levels of integrity in Customs Officials. This has the attendant

¹⁰ KSU has a scanner mounted to help with trade facilitation in line with SAFE framework of standards. However the scanner was not commissioned by the end of October 2014 at the expense of trade facilitation.

result of reducing TTCs as well as cutting delays at border posts, a factor that promotes trade facilitation.

4.6 Trade Facilitation in the Southern African Region

COMESA promotes removal of NTBs in Articles 45 and 49. The Organizations' basis for facilitating trade resides in the Free Trade Area (FTA), which was launched in the year 2000 with an objective of promoting duty-free and quota-free trade based on rules (Mangeni, 2014). The existence of a rules-based system that the COMESA Court of Justice imposes on MS' companies ensures predictability in the region and enhances trade facilitation (Mangeni, 2014). COMESA further stipulates that MS including Zambia should avoid introduction of new NTBs. Some of the provisions in COMESA that obliges Zambia to facilitate trade include:

- i. Article 3 (C) which makes provision for MS to create an enabling environment for cross border trade;
- ii. Article 4 (1) (a) which entails MS to abolish NTB when trading amongst one another;
- iii. Article 4 (1) (C) which calls for MS to simplify trade documents;
- iv. Article 4 (2) (a) which encourages MS to cooperate in facilitating trade in goods and movement of people;
- v. Article 4 (2) (b) which calls on MS to make regulations that promote cross border trade;
- vi. Article 4 (6) (a) which calls for harmonization of information processing; and
- vii. Article 4 (6) (b) which encourages MS to harmonize their trade related rules.

In addition to the above provisions, Article 69 encourages MS to simplify and harmonize their respective trade documentation and procedures, through minimization of documentation. This provision also encourages uniformity in the kind of information required in the documents. In like manner, Article 70 of the COMESA treaty promotes trade facilitation through inspiring MS to reduce the cost of documentation and by promoting common standards for trade procedures. This is augmented by Article 71, whose provisions encourage MS to incorporate ICT in their border procedures. Despite domesticating most of these trade facilitation provisions, Zambia has had a bad

implementation record at KSU. The main reason for not implementing many of these provisions have to do with lack of political will.

COMESA through the use of its FTA base has gone on to introduce various trade facilitating instruments, such as the regional payment and settlement system (Mangeni, 2014). This system aims at simplifying payments in regional trade. The other measures in COMESA that reduce TTCs include the 'Yellow Card' third party insurance, the advance cargo information system and the simplified trade regime. In addition, COMESA has introduced trade information desks at KSU aimed at disseminating information to small scale traders. These desks have an objective of helping the trading community on the promotion of intra-COMESA trade. Additionally, information is also availed on sanitary matters in order to make the trading process predictable. The COMESA yellow card insurance is functional at KSU, but the regional payment system is not, because Zambian and Congolese politicians are not keen to implement it. A holistic approach in implementing these COMESA initiatives can greatly improve trade facilitation in Zambia.

On the other hand, the Southern Africa Development Community (SADC), in Article (VI) of the trade protocol also promotes the elimination of NTBs. It states that:

'Except as provided for in this protocol, Member States shall, in relation to intra-SADC trade: a) adopt policies and implement measures to eliminate all existing NTBs and b) refrain from imposing any new NTBs'

SADC defines NTBs in terms of customs procedures; import levies; import/export restrictions and technical barriers to trade. However, numerous MS in SADC including Zambia have actually been introducing new NTBs, including agricultural export restrictions, and the imposition of quotas in violation of Article XI(1) of the WTO. MS' actions reduces SADC's authority, while the absence of a strong legal enforcement mechanism within SADC exacerbates the situation (Erasmus, 2014).

Further, the protocol's Article III (I) (C) seem to permit MS to avoid the responsibility of eliminating NTBs, thereby stifling trade between countries in the region by exempting countries from complying with Article (VI). It states that:

‘ Member states which consider they may be or have been adversely affected, by removal of tariffs or non-tariff barriers to trade may, upon application to CMT, be granted a grace period to afford them additional time for the elimination of tariffs and NTBs. CMT shall elaborate appropriate criteria for the consideration of such applications.’¹¹

Similarly, Article XXI of the SADC trade protocol also permits protection of infant industries by MS, a factor that is sometimes used in preventing regional trade facilitation. The above-mentioned SADC provisions are contradictory and work at the expense of trade facilitation. Nonetheless, SADC promotes customs-to-customs cooperation among MS in Article 13 (Cooperation on Customs Matters) as a way of promoting regional trade. Similarly, SADC promotes trade facilitation by encouraging freedom of transit among MS in Article 15 which states that:

‘Products imported into, or exported from, a member state shall, as provided for in Annex IV of this protocol, enjoy freedom of transit within the community and shall only be subjected to the payment of normal rates for services rendered’.

This provision is particularly important to landlocked countries like Zambia and is in line with GATT94 Article V (*Freedom of transit*).

SADC and COMESA together with the East African Community (EAC) in the TFTA negotiations under Article X (I) have also joined hands to promote trade facilitation. The three economic groupings have integrated their trade facilitation activities into a single initiative called the comprehensive tripartite trade and transport facilitation program. The program aims at cutting TTCs and reducing border crossing times in MS.

¹¹ CMT refers to the Council of Ministers of Trade

4.7 Background to the DRC and Zambian Trade

KSU links the Katanga province of DRC to Zambia, and through the country to various regional ports for access to international markets. The crossing point is the major entry and exit point from the DRC's mineral rich province of Katanga.

The DRC is an important trading partner of Zambia and ranked as the fourth largest trading partner after the Republic of South Africa, Switzerland and China in 2013 (Bank of Zambia (BOZ), 2014). Zambia's major exports into the DRC include cement, lime, maize, electrical energy, sugar, explosives, chemicals and sunflower oil. In return she imports copper ores and concentrates; cobalt ores and concentrates; sodium sulphites; zinc dust and precious stones. The level of trade taking place between the two countries is growing in terms of volumes and composition.

Table 2 below highlights trade performance between the two countries, and the DRC's ranking in comparison to other countries that trade with Zambia between January and June in 2014¹².

Table 2 Trade Performance between Zambia and DRC

| Month (2014) | Zambian Exports to DRC Percentage of Total (%) | DRC ranking as an Export destination | Zambian Imports from DRC Percentage of Total (%) | DRC ranking as a source of Zambian imports |
|--------------|--|--------------------------------------|--|--|
| January | 8.6 | 4 | 18 | 2 |
| February | 9.3 | 3 | 16 | 2 |
| March | 8.1 | 3 | 19.1 | 2 |
| April | 14.5 | 3 | 24.6 | 2 |
| May | 5.9 | 4 | 8.0 | 4 |
| June | 6.6 | 4 | 20 | 2 |

Source: Compiled by the author from CSO Data

Table 2 above shows that Zambian exports to DRC averaged 9%, while the average imports stood at 18% in the first half of 2014. On the other hand, Zambia imported US\$10.2 billion worth of goods in 2013, of which US\$1.9 billion came from the DRC representing 19% of total imports (BOZ, 2013). The country also exported US\$10.6 billion

¹² Sourced from CSO Bulletins available at www.zamstats.gov.zm. The exports are calculated on the basis of Free on Board (FOB), while imports are based on cost freight and insurance.

worth of goods to the world in 2013, with US\$1.23 billion (12%) of total exports destined to DRC in the same year (BOZ, 2013).

The statistics above highlights the importance of DRC to Zambia's foreign trade. There is an implication that a reduction in trade bottlenecks exhibited by limited trading hours, insecurity, technical barriers to trade and lengthy but archaic customs procedures between the two nations could increase trade volumes.

The KSU border currently operates from 06:00hrs to 18:00hrs which makes trading difficult. Insecurity that resulted in the killing of two truck drivers in the first quarter of 2014 is also a challenge to trade. The other problem is that customs procedures on either side of the border have seen cosmetic modernization, as evidenced by duplicated computer records with gate registers. On the other hand computer system connectivity problems and stringent visa requirements contribute to the stifling of trade between the two nations. In order to overcome some of these problems, there is need to increase operational hours as well as to increase border security.

In addition, relaxing the visa regulations can help promote trade between Zambia and the DRC. In fact, the DRC is one of the very few neighboring countries where Zambians require a visa to enter. This is contrary to SADC's Article 14 of the protocol on movement of people and COMESA treaty's Article 164 provisions¹³. Currently, the Zambian authorities impose costly visa requirements on Congolese nationals. This is despite the fact that the DRC is the nation's biggest trading partner amongst Zambia's neighbors. In return, the DRC also has a heavy visa regime that targets Zambians entering that country. This does not help the trade facilitation cause. It is actually contrary to regional bodies' provisions highlighted above with regard to movement of people. Consequently, both countries need to comply with COMESA's Article 4 (2) (b) which promotes the enactment of regulations that promote trade.

¹³ SADC Article 14 of the protocol on the facilitation of movement of persons, and Article 164 of the COMESA treaty provide for free movement of people within the region, but both Zambia and the DRC are reluctant in implementing these provisions.

The KSU border post is one of Zambia's busiest borders in terms of volumes (Nsingo, 2014). The border handles an average of 800 trucks per day, going in either direction and these truck's movements are affected by archaic border procedures on either side of the border. Ironically, both Zambia and the DRC do not seem to have any plans to litigate against each other before multilateral or regional bodies to remove these trade hindering measures because of sovereignty beliefs (Erasmus, 2014).

4.8 KSU Clearance Procedures

The KSU border makes clearance of merchandise from and into Katanga province of DRC. The cleared merchandise include goods such as copper, cobalt, chemicals, cars, machinery, electronics and foodstuffs. The value of all cleared goods going in either direction at KSU exceeded US\$16 billion in 2013 (ZRA, 2014).

KSU makes final clearance of some goods, processes Inland-Transits as well as Through-Transits¹⁴. There is a wide range of intermediaries involved in goods conveyancing such as CBs, transport operators, banks and insurance companies. The CBs are always licensed by the customs division to provide services to the trading community, such as provision of bonds, required when consignments move in transit. The CBs form an important link between the business community and customs. Compliance with Zambian trade regulations needs coordination with many if not all parties involved in importations and exportations. However, dealing with all supply chain players including submitting documentation to relevant authorities', results in indirect or direct TTCs. Many of these TTCs are wasteful and require avoidance by both public and private economic actors (Grainger, 2008).

The process of clearance at KSU begins with CBs framing declarations, based on the documentation presented to them by traders, which are then submitted electronically to Customs¹⁵. The documentation required depends on the type of importation or exportation under process. On average, one in Zambia needs seven and eight documents to export or import respectively (WB, 2014a). The volume of paper work required to cross the KSU border is too much and this expands trade related costs. This requirement contradicts chapter six provisions under COMESA Article 70 (a). These provisions call for a reduction in cost of documentation and recommends MS to reduce required paper work. Table 3 below shows some documents needed to export and/or import depending on the nature of merchandise.

¹⁴ Through-Transits are consignments for third party countries passing through Zambia into or from DRC. While Inland-Transits refer to consignments from the KSU border to inland Zambian customs stations.

¹⁵ In line with *CAP 322 section 173 (3)*, documents are submitted to customs only. However any declaration of interest to other Government agencies is printed out and given to appropriate agencies if need be.

Table 3: Zambian Documentary requirements¹⁶

| Import documents | Export documents |
|--|---|
| Commercial invoice | Export declaration form |
| Contract of sale | Certificate of origin where necessary |
| Bills of lading | Phyto-sanitary certificates where necessary |
| Road Consignment note | Timber verification certificates |
| Manifests and packing lists | Packing lists |
| Certificate of origin | Road Consignment note |
| Permits for restricted goods such as pharmaceuticals | Cargo manifest Customs declaration form |
| Customs declaration form | Commercial invoice; bills of lading |

Source: Zambia Revenue Authority (2014)

Table 3 above shows the numerous documents required to clear goods at KSU depending on the nature of a consignment. A good number of these documents are not obtainable at the KSU border, but can be accessed in designated places especially Lusaka. In addition, most declarations at KSU are submitted to customs with errors because many CBs are not competent and due to constant re-capturing of data (OECD, 2009). Such errors require mandatory rectifications which action comes with costs in terms of processing fees and time factors.

Customs officials access the submitted declarations on ASYCUDA World (AW), however Customs officials sometimes ask for original documents. The request by customs for original copies is a duplication of the process, and needs discouragement in order to minimize costs. Upon submission of a declaration, a CB is able to tell the computer allocated lane under the following criteria;

| | |
|--------|----------------------------------|
| Red | Need for Physical Inspection |
| Yellow | Need for Documentary Examination |
| Blue | Need for Post Clearance Audit |

¹⁶ Certificates of origin are not necessary in the trade between Zambia and DRC because the latter does not participate in SADC or COMESA FTA arrangements.

Green Outright assessment

In the event a declaration goes through the red lane, physical inspections are mandatory. The trader or his agent and customs officers must be present during inspection before payment. However, customs procedural manuals do not specify the need for officials from other government agencies to take part in inspections. Declarations going in the yellow lane require documentary examination followed by payment. The declarations that pass through the blue and green lanes are usually low risk and take the least times to be cleared by KSU customs. However in all cases, there is no separation of release from clearance as recommended by the RKC. The failure to separate release from clearance contributes to trade expedition problems at KSU.

Ninety percent of traffic at KSU border is of the Through-Transit type, passing through the Zambian customs territory. Through-Transits cross from DRC to different parts of the world or from different parts of the world into DRC. Figure 3 below shows the process of goods movement in the direction of DRC.

Fig. 3 Clearance of Cargo Destined to DRC

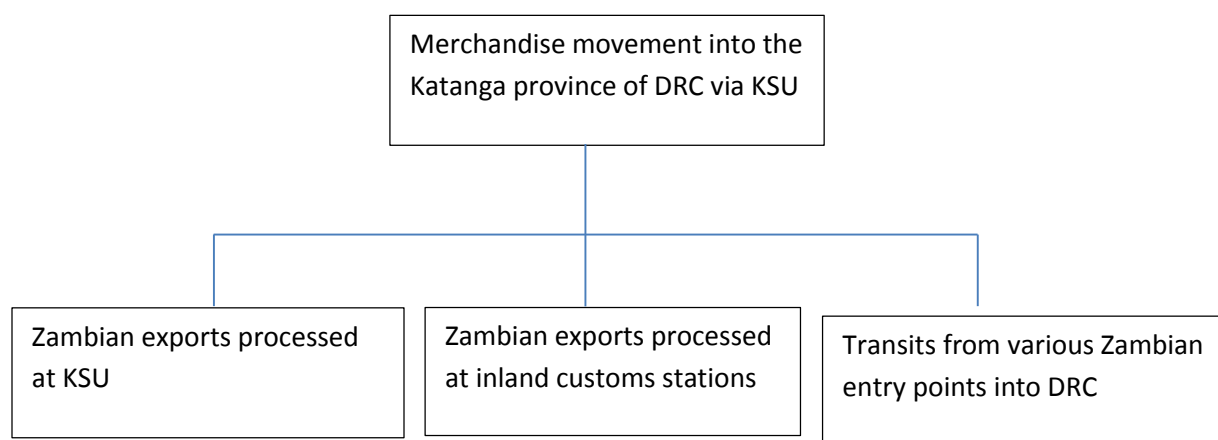


Fig 3 shows the processing of DRC destined cargo. The steps are highlighted below:

- Submission of export documents to an appointed CB to do the clearance;
- CB frames declaration, attaches documentation before electronically submitting to customs. The declaration shows the lane it has taken on submission;

- The customs examining officer accesses the declaration and checks the accuracy in terms of codes and supporting documentation;
- If the declaration is accurate the Examiner passes to the surveyor. Otherwise the Examiner issues an electronic query to the CB and he may sometimes ask for original physical copies¹⁷. In addition a physical inspection request can be done at this stage;
- When the declaration reaches the surveyor, it is assessed and requires payment unless the surveyor who is the controlling officer has queries for his subordinates;
- Payment is done at the cash office and sometimes through bank transfers. The processing fee is K55.60 (US\$10.00) per declaration;
- The CB gives the documents to the driver to pay crossing fees which are pegged at US\$100.00 per truck regardless of the size of the vessel;
- Upon payment, the driver proceeds to the exit gate heading into DRC and presents the documents to a customs official manning the gate who records the consignment and truck details in the exit register gate¹⁸. The customs official retains all the documents before allowing the truck to exit into DRC;
- At intervals, the official manning the exit gate takes the documentation surrendered at the gate, to the controlling office;
- At other intervals, a customs official from DRC side of the border comes to physically collect the document from customs Zambia, as a way of data exchange between the two customs administrations of DRC and Zambia.

The data exchange is done manually because the two systems (Zambian and Congolese AW) are not interfaced. Non-interface of systems is contrary to COMESA provisions in Article 71 which promotes use of technology¹⁹. This does not help the trade facilitation cause and works against the best practices as promoted by the RKC and UN/EDIFACT. During an interview with a senior customs official in-charge of data management, it was

¹⁷ Physical inspections are sometimes done on exports because of the duty draw-back claims if goods are exported in bond.

¹⁸ The register entry is a duplication of work as all the information is already captured on the system

¹⁹ The COMESA Treaty in Article 4 (6) (a) promotes MS to harmonize information processing to simplify trading but this is not the case at KSU because political will is lacking.

revealed that DRC Congo Customs (OFIDA) does also regularly send people to Zambian customs head office to collect data using flash disks. This method of exchanging data is not very ideal for optimal trade facilitation either. Nonetheless, the official also pointed out that there are plans to implement electronic data exchange. This exercise was said to be feasible because both countries are now using the AW system. Such data exchange mechanisms are ideal and conform to both Article XII of the TFA and the RKC provisions.

In the event some export is done at an inland office, customs clearances does not take place at the border instead drivers proceed straight to the border exit gate. However, the process follows a similar pattern and all documents must be left with customs Zambia for eventual collection by OFIDA.

Through-Transits coming from all over the world, destined to DRC, are first dealt with in the processing-hall for bond guarantee redemption. Upon completion of processing-hall formalities, trucks proceed to the exit gate facing the DRC. The customs official at the exit gate collects documents, and also captures the information in the exit register before allowing the truck to exit. The official is then expected to physically take returned documents on a regular interval to the controlling office for filing. The release order, and transit declarations issued at the originating station is returned by Zambian customs, while the remaining documents are collected by OFIDA at regular intervals.

In times of system failures, the bond guarantees are not acquitted upon submission of transit documents. Such kind of delays hold up bonds, which affects the processing of new declarations at originating stations, by SMEs whose bond guarantees are held up. This does not conform to Article V of GATT 94 or Article XI of the TFA which require expeditious bond releases.

The processing of commercial goods originating from DRC destined for Zambia or other countries is done using any of the three methods listed below:

- (i) Final Clearances – Cargo that is final cleared at KSU Zambian side destined for consumption in the country;
- (ii) Inland Transit - Cargo from DRC destined for final clearance at inland customs ports in Zambia; and

(iii) Through-Transits cargo from DRC destined to other parts of the world.

The above typology is highlighted graphically in Figure 4 below:

Fig. 4 Clearance of Cargo from DRC at Zambia's KSU

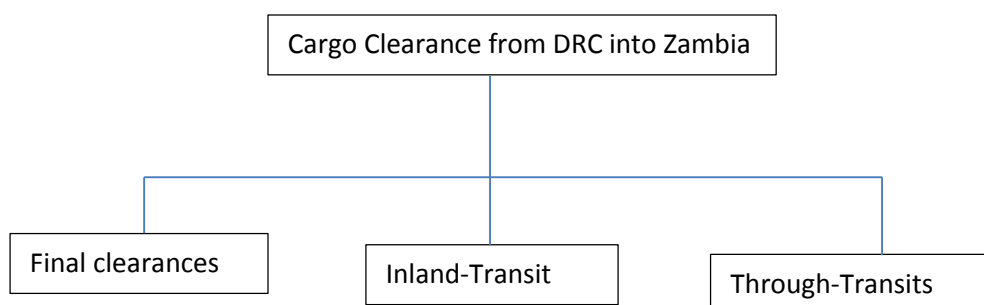


Figure 4 above highlights the fact that some goods' clearance is completed at the border (Final clearances) while other consignments (Inland-Transits and Through-Transits) are sent to other stations for further processing. The final-clearance declarations take longer because of revenue implications while through-transits take the least time. The total number of 2013 KSU declarations for both entry and exiting goods are as captured in Table 4 below:

Table 4 Type of Clearances made at KSU Border Post in 2013

| Category | Declarations (No) | Value (US\$) |
|--|-------------------|---------------------|
| Inland-Transit from KSU | 5, 389 | 971, 700, 134.00 |
| Through-Transit from KSU | 36, 131 | 6, 227, 690, 294.00 |
| Inland-Transit to KSU | - | - |
| Through-Transit to KSU | 36, 164 | 6, 223, 380, 899.00 |
| Exports at KSU into DRC | 18, 884 | 421, 720, 611.00 |
| Exports from other stations making exit at KSU | 21, 858 | 1, 078, 044, 803.00 |
| Consignments Final Cleared at KSU | 6, 499 | 2, 682,393, 005.00 |

Source: Zambian Revenue Authority (2014)²⁰

²⁰ The values are in US dollar terms based on CSO data using an annual average exchange rate of 1US\$=K6.01 (Dollar /Kwacha exchange rate)

Table 4 above highlights the fact that various categories of goods at KSU are cleared depending on the destination. The decision on clearance of the goods is supposed to be made by the importer, although customs at the border automatically allows the Through-Transits. On the other hand, most Inland-Transits are allowed on special cases depending on the lack of capacity for the border office to clear.

Through-Transits to and from KSU constitute the majority of traffic experienced at the border-crossing point. In contrast, inland customs offices do not send goods for clearance at the KSU as highlighted in row number four of Table 3.

An importer, coming from DRC with an intention to process Through-Transits, will be required to acquit any bonds picked up from inside DRC at the DRC side of the border. This is because Congolese bond guarantees do not apply in Zambia and vice versa.

Upon entry into Zambia, such an importer with Through-Transits or his agent submits original documents to a CB who in turn prepares customs declaration documents. There is need during this process to arrange for fresh bond guarantees on the Zambian side for transit goods, which require extra payments. The process of drafting and lodging new declarations extend border dwell time with extra cost implications.²¹

The process of clearing Through-Transit from DRC at KSU is highlighted below:

- The driver of the vessel begins by paying a municipal council levy that is stipulated in Government Act No. 22 Section 70 as the vessel is propelled into a customs controlled area²²;
- The eight original DRC export documents with different signatures are then handed over to the CB who starts preparing Zambian customs declaration forms;

²¹ The issue of acquiring a new bond at every border post does not help the trade facilitation cause. There is need for Zambia and DRC to start using either the RCTG under SADC or COMESA to save on costs and delays. International best practices recommend use of regional customs bonds.

²² This piece of legislation does not conform with GATT 94 Article (VIII) which states that any charges on transit cargo should be proportional to services rendered. The Council does not provide any services to transit traffic.

- The CB prepares and submits Form CE20 electronically with the attached documentation. The average number of import documents usually required in Zambia Customs are also eight;
- The declaration is accessed by an Examining Officer for examination in line with AW risk management techniques of lanes highlighted above. Any queries are communicated by electronic means and if the declaration is accurate it moves to the controlling Officer's (Surveyor's) desk;
- The Surveyor makes assessment or may redirect the declaration to examining in case of any required rectifications. If the surveyor gauges the declaration to be accurate it is sent to the release desk for collection by a CB;
- The CB then proceeds to cash office to pay processing fees as well as other taxes;
- Payment is followed by generation of a transit declaration and a bond guarantee;
- Once the transit document is generated, the declaration is then physically taken to the examination office for the generation of the release order;
- This is followed by attaching the release order to documents, an officer of customs stamps the whole set and splits the documents giving sets to the driver, CB and Customs retains a set;
- The next stage involves visiting the RTSA desk and the insurance desk to purchase road tolls and insurance respectively;²³
- The truck or any vessel may then proceed to the Zambian entry gate where a customs official registers consignment and truck details. The vessel is then given five days in line with Section 197 of CAP 322 of the laws of Zambia, as read together with customs regulation 127 (2), to make the journey through Zambia. In case of a breakdown the driver or trader should inform the nearest customs office or the police. The above process is lengthy and fraught with delays and costs of various kinds.

The Inland-Transit process is similar but upon leaving the customs offices, a trader has according to *CAP 322 section (32) (4)*, fifteen days within which he should report at the

²³ For COMESA traffic purchase of insurance may not be necessary if a vehicle has a Yellow Card, which is the COMESA regional insurance scheme that is acceptable in MS. The Yellow Card is a very good trade facilitation measure in COMESA.

customs office of destination. The long period given for inland-transits holds bond guarantees for longer than necessary. This in turn affects the processing of new declarations by SMEs who usually have limited financial capacity to raise fresh bonds for new business. These SMEs make up a large number of firms in the customs broking industry. In order to promote the development of SMEs, authorities should reduce the fifteen-day period. This can result in quicker bond redemption and more business opportunities for SMEs leading to increased profit margins. Increased profitability may result in better prospects for SMEs' growth which factor is instrumental in job creation and poverty alleviation in Zambia (Hellqvist, 2003).

The final clearance of goods for consumption at KSU also follows the same pattern as highlighted in the Through-Transit. Slight variations start when payments are done by the CB to the customs cash office. Upon payment of duties and other charges, the declaration goes to be examined so that a release order is processed. The surveyor, who assesses the declaration may if need be call for physical examination of a consignment. This requires the presence of the trader or his agent in conformity with Section 16 of CAP 322 of the laws of Zambia. The physical examinations are common and the customs procedures manual states that:

'Officers must be encouraged to conduct physical inspections whenever possible, after careful scrutiny of declarations, in order to ensure compliance and safeguarding of both revenue and entry/exit of prohibited /restricted imports/exports. But in all cases risk management must be applied.'

These physical inspections are done in the absence of other government agencies, a factor that causes delays and extra costs, if those agencies decide to conduct their own physical examinations. A joint approach to dealing with consignments saves time and reduces costs for cross-border traders. In addition, a joint approach to inspections reduces the element of damage that comes due to multiple handling of consignments or possible pilferage. Consequently border operations may require a coordinated approach

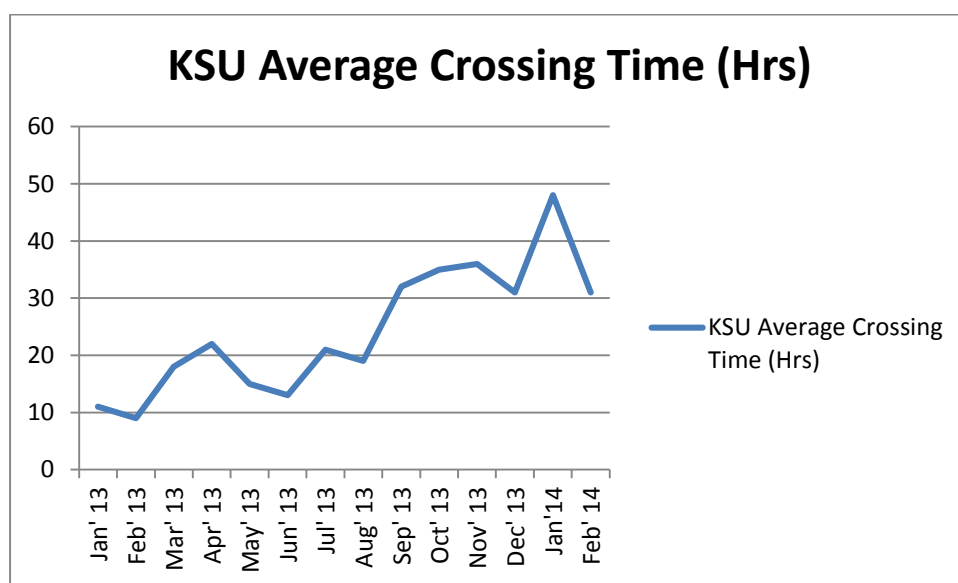
in order to speed up clearances and to effect joint authority on all consignments coming or leaving Zambia²⁴.

In the case of consignments coming under an Advance Ruling provision, physical inspection takes a mandatory approach as provided for in the customs operations manual Part 701.062 which states that:

'Managers are to ensure that physical inspections are conducted on all goods declared on the basis of an advance tariff ruling in order to confirm that the imported goods correspond in all material fact to the description of goods in the ruling'.

This mandatory requirement has the effect of reducing the merits of trade facilitation that accrue due to the advance ruling. It could assist the trade facilitation cause, if a risk based approach to such importations is used, just like the situation for other customs importations. According to Trade Mark Southern Africa as cited by WB (2014b), the time needed to clear an importation through KSU has been increasing in the recent past as highlighted by Figure 5 below:

Figure (5) KSU Time of Importation



Source: WB (2014b)

²⁴ Joint action is recommended as a best practice by the RKC and by regional bodies such SADC and COMESA.

Fig (5) highlights that time required to clear an import at KSU in January (2013) was just about ten hours which increased to over forty hours in January (2014). The increase in clearance times through the KSU border can only be attributed to complicated rules and the lack of modern border processes. The expanded time can also be attributed to insecurity at the border among other factors.

On the other hand, making importations or exportation of restricted/controlled goods at KSU, requires state permission. This is usually the case for maize or maize products' exports into DRC, where one needs to obtain permits from the ministry of agriculture head office. This is a requirement because the Zambian Government stipulates quotas on maize exports in violation of WTO's Article (XI) (I)²⁵. In fact these quantitative restrictions are also prohibited under the Agricultural Agreement Article (IV) (II). Similarly, the SADC protocol under Article VI when read together with Article (VII) also opposes the use of quantitative restrictions.

The use of quotas under WTO law is prohibited but Zambia has justification for the restrictions using the basis of food security²⁶. Even though the WTO law permits derogations in the use of Article (XI) (1) under certain circumstances, Zambia's situation is usually a blatant violation of the provisions.

The cost of obtaining permits to export maize and maize products tend to increase TTCs because an exporter may be required to travel to Lusaka. He or she may incur travel and lodging costs as well as pay for the permit, the cost of which a trader has to recover. The fact that restricted goods are configured on the AW system as high risk goods, following the red lane, leads to the subsequent requirement for physical checks. Such physical checks cause further delays exacerbating the TTCs. In addition to costs incurred on the Zambian side by an exporter of products such as maize, the customs authorities in DRC also requires a fumigation certificate for such food products (WB, 2010).

²⁵ Quantitative restriction can lead to litigation in WTO law as evidenced by the panel's action in interpreting the meaning of Article (XI)(I), in the case involving Japan (Panel report BIS D 35S/163).

²⁶ The WTO Legal Texts *'The results of the Uruguay Round of Multilateral Trade Negotiations, General Agreement on Tariffs and Trade'* (1999) 437

Moreover, the KSU border post operates from 06:00hrs – 18:00hrs. This is in line with the *Customs and Excise (Ports of Entry and Routes) Order Sections 13 and 199* of Zambian law. This section stipulates that the KSU border should open for twelve hours daily, but the heavy traffic from either side translates into inadequate operational hours (Kassee, 2014). Clearly, there is a requirement to increase operational hours taking into account the needs of freighters and other stakeholders.

In 2012, the Zambian Minister of Commerce took into account traders' needs, and planned to ease the flow of traffic at the border by increasing border operations to twenty four hours per day (Mulenga, 2012)²⁷. In like manner, a Senior Customs official based in head office revealed in an interview that customs division have also made some legislative suggestions to extend the KSU operational hours by an extra four hours. This means operations could be designated from 06:00 – 22:00hrs.

Despite the numerous assurances made by the Minister in 2012 and customs officials, the operational hours at the KSU border remain limited. Limited operational hours are one major factor that stifles KSU trade. This is despite the fact that extending customs operations by a few hours per day at KSU can significantly increase annual bilateral trade flows between DRC and Zambia (Hoekman & Shepard, 2013).

²⁷ Mr. Robert Sichinga, the Zambian Commerce Minister, told the media in October 2012 that he had engaged Congolese officials in Katanga province to increase the operations to twenty four hours per day.

4.9 Transit Trade at KSU Border Post

The KSU border post processed a total of 36, 131 customs declarations in 2013 destined to various countries from DRC worth approximately US\$6.23 billion²⁸ (BOZ, 2014). On the other hand, the border acquitted some 36, 163 declarations worth US\$6.22 billion worth of goods from different parts of the world destined to DRC's Katanga province.

Goods transit Zambia from SADC and COMESA MS, as well as from distant shores through South African ports, Walvis Bay, Mozambican ports and the port of Dar-es-Salaam into Congo via KSU. The goods are mostly transported by road from various Zambian entry points such as Chirundu, Nakonde, Mwami, Kazungula and Katima Mulilo. Apart from processing declarations and acquiring bonds in neighboring countries, each truck destined to Congo has also to acquire bonds and process documentation at the above-mentioned Zambian borders. The customs processing fees have an average cost of US\$10 per declaration, when a truck makes entry into Zambia before starting its transit journey to DRC. Various CBs have also set up bond facilities at numerous entry points, which traders access after paying a specific fee, to facilitate transit movement. The bonds get acquitted or redeemed, when transit goods exit Zambia and satisfy all legal requirements. The CBs' bond fees costs between US\$50-US\$150 (Keyser, 2012). If any trader wishes to move the consignment into the city of Lubumbashi from the border town of KSU, they are expected to seek fresh Congolese bonds, and have to pay the requisite charges to Congolese CBs.

In the case of exports from DRC's Katanga province, bond guarantees prepared in Lubumbashi lose their validity when OFIDA redeems them before trucks proceed to the Zambian side of the border. The Zambian customs authorities expect such cargo transiting through the country to seek fresh transit bond guarantees. These guarantees should be from approved customs broking firms at a fee in line with CAP322 section 197 of the laws of Zambia. Any truck transiting through the country is given only five days to make exit at any of the stipulated points. In the instance the trucks are destined to the port of Dar-es-Salaam, the exit point is Nakonde border post at which point the Zambian

²⁸ Calculated by the author from Central Statistics data for 2013

bond guarantee is redeemed. The exiting truck will then be expected to process fresh entries at Tunduma, the Tanzanian side of border.

Traders are required to present all necessary transit documentation, besides paying the processing fees at each and every border post before entry is permitted. Presentation of original documentation and acquisition of fresh bonds at each country's entry point have cost implications. When one also takes into account the time required to process the declarations for transits at each border, it becomes clear the current arrangement of processing transits is non-trade facilitating. The situation at KSU is exacerbated by the general tendency of drivers headed into DRC who arrive in the afternoon, and prefer to spend nights on Zambian soil due to security concerns in DRC. This practice holds bonds and makes trading expensive. This is because SMEs that provide bonds have limited financial muscle and depend on timely bond acquittal to conduct fresh business. The result of spending nights on the Zambian side by drivers is that, SMEs involved in transit business wait longer to conduct fresh business, because their bonds are held up by late re-imbursements. In like manner, the behavior causes delays to numerous business people trying to access bonds, while the costs of bond fees tend to go up due to increased demand amidst reduced supply. This stifles the growth of SME and works against employment creation in the nation.

The requirement to process fresh entries and to pay fees for bonds in each and every customs territory is extremely costly for traders. The costs arise from having to move with at least three sets of original copies of invoices, manifests, bills of lading and other kinds of documentation. While freedom of transit exists at KSU in line with Article V of GATT 94 and Article 11 of the TFA, the formalities for transiting goods through KSU to various ports in the region seems to be at variance with Article VIII in GATT 94.

The complicated formalities have been allowed to exist, despite the fact that streamlined transit processes are important and essential, for goods destined to landlocked countries such as Zambia and DRC (Kassee, 2014). The two countries depend on transits to access various markets in the world.

The SADC, having recognized the importance of transit trade, took the initiative to develop regional transit management systems (Kassee, 2014). The SADC Transit Management System (TMS) is derived from the SADC Trade Protocol and is made up of;

- Annex IV of the protocol on Trade concerning Transit Trade and Transit Facilities;
- Appendix VI of the Annex IV concerning Regional Customs Transit Bond Guarantee (RCTG); and
- Transit Regulations and Transit Manuals.²⁹

Nonetheless most countries including Zambia and DRC, who stand to benefit the most, have not implemented these SADC provisions resulting in extra TTCs³⁰. Zambia does not even recognize bond guarantees originating from other SADC MS, despite that such recognition can help the integration agenda leading to better trade facilitation. Further, even though the SADC Committee of Ministers of Trade did approve the RCTG mechanism, it is yet to operate notwithstanding the significant benefits associated with its operationalization.

COMESA has also been working towards the implementation of a regional transit system, Article 4 (1) (b). This system is already operational in the northern corridor countries of Kenya, Rwanda and Uganda. The system allows for transiting of all countries with only one transit guarantee bond, as opposed to multiple bonds in each member state. The regional guarantees work in such a manner that once a trader obtains a guarantee in Mombasa, such guarantee would be used to cross all borders in the region up to the destination point, without a requirement for fresh bonds or declaration processing. This cuts processing time and the processing costs too and it needs replication at KSU.

Notwithstanding Zambia's membership of COMESA, the country had not ratified the COMESA RCTG-CARNET scheme as at June 2013 (COMESA, 2013). This factor has worked against trade facilitation initiatives in Eastern and Southern Africa, and has stalled

²⁹ Source SADC Protocol on Trade as amended

³⁰ Zambia has legislation promoting the use of RCTG but stakeholder opposition especially by people with vested interests has prevented full implementation of the scheme. On the other hand political will has been lacking.

the scheme's implementation in the southerly direction (COMESA, 2013). The clearing agents associations in Zambia are particularly opposed to the scheme. They are scared to compete with other service providers in SADC/COMESA MS. However, implementation of an RCTG scheme can reduce transit costs besides promoting competition. The expected cost reductions are in terms of the system processing fees at each border post, and the elimination of bond fees in each member state. In addition, the implementation of such a system may not only reduce the documentation required at each border post, but it can also reduce traffic dwell times. The reduction in traffic dwell times at entry points such as KSU can lead to significant cost elimination (Pearson, 2011).

It is ironic to note that Zambian regulations recognize the regional transit guarantee schemes, but the only problem with operationalizing the scheme has to do with political will³¹.

Acceptance of regional transit guarantee schemes can cut TTCs at KSU resulting in increased volumes of trade. It would therefore make sense for authorities in both DRC and Zambia to promote use of this trade facilitating tool because it cuts costs.

³¹ Zambian Customs Regulation in Part XIV under section 138 addresses the Customs Bonds Agreements as stipulated in COMESA and SADC

4.10 Trade Transaction Costs at KSU

Processing of trade documents at KSU has a cost element associated with services rendered. Many organizations, both public and private, do charge for the services they render. However, the charges by the public sector at the border should always be proportional to services that facilitate trade, in order to conform to WTO law.

The Customs and Excise division at KSU works in close collaboration with CBs. The CBs are responsible for framing declarations and submitting them to Customs in an electronic manner using the AW Platform. Every submitted declaration requires a payment of ZMW K55.60 (US\$10.00) in recognition of the services rendered, which payment conforms to Article VIII of GATT 94. However, sometimes customs officials request for original documents to be brought to the office. This duplicates the submission process resulting in delays that add extra costs for traders. Some of the delays are caused by AW systems breakdown resulting in other extra costs³². The delays can sometimes exacerbate costs, especially if they are immediately followed by an exchange rate adjustment which happens every fortnight³³. When the local currency weakens against the American Dollar, the tax assessments tend to increase.

The CBs also charge for services rendered to trade with prices ranging from US\$30 to US\$ 150 per declaration depending on whether a bond is required. However, the competence of some of the CBs is questionable and gives rise to many errors in declarations, whose rectification requires time and has some cost element which stifles trade (OECD, 2009). There is therefore a need to accredit all CBs with specified qualifications to eliminate shoddy work. Inasmuch as Customs charges US\$10.00 for processing a declaration, in the event of rectifying an error, that fee doubles to US\$20.00. Other costs at KSU come from the mandatory crossing fee of US\$100.00 per truck. This is quite exorbitant and is in violation of Article VIII of GATT 94.

³² There is no local IT specialist to attend to systems problems at KSU. Consequently any breakdown at KSU is a major impediment to trade. For instance, AW system was dysfunctional between 09/11/2014 and 09/12/2014 and the KSU border could not process all type of entries leading to costly delays and complaints.

³³ The customs division tends to value importations in United States Dollar (US\$) which valuation is then converted into the local currency (Kwacha) equivalent. The division adjusts exchange rates every two weeks in line with the BOZ ruling rates. The fluctuations can sometimes be high leading to a higher tax assessment depending on the strength of the local currency to the United States Dollar. Delayed clearances are affected by rates of exchange.

The Chililabombwe municipal council is also represented at KSU and collects a Motor Vehicle Fee for all vehicles entering the country from DRC in line with Zambia's Act No. 22 Section 70. According to this regulation, each motor vehicle except government and diplomatic vehicles has to pay a fee which is equivalent to US\$3.00. This charge on motor vehicles is not proportional to any services rendered by the municipal council and is therefore another violation of Article VIII of GATT 94. The effect of the fee is that of increasing TTCs between Zambia and her trading partners including the DRC. The visa requirements at KSU for Congolese drivers coming into Zambia and vice versa are also non-trade facilitating. Each Congolese national, including drivers pay visa fees of US\$100 for double entry into Zambia. The visa requirement prevents people from crossing KSU and hinders exploitation of business opportunities. This is contrary to SADC Article 14 of the protocol on free movement of people and COMESA Treaty's Article 164 provisions. The two provisos propose free movement of people but implementation of these rules has lagged behind. Consequently, non-implementation of these regional provisions tends to increase TTCs and hinders expansion of trade.

The trading costs on the Congolese side are even greater. The truck transit charges from the border to Lubumbashi are pegged at US\$300 return journey³⁴. Other costs in DRC include a merchandise quality testing fee of US\$30; card entry fee of US\$80; truck insurance card US\$100; tourism fee of US\$25; driver health card fees of US\$20; visa for driver of US\$90; and an entry fee of US\$80 in addition to a crossing fee pegged at US\$200 among other charges. Many of these charges are not proportional to the services provided and are not compliant with WTO rules. Under normal circumstances, Zambia could have taken the matter before a regional dispute settlement system or indeed before the WTO to resolve these unnecessary costs. However, none of the African based countries has taken the initiative to address the nullification of these benefits by DRC under regional or WTO law (Erasmus, 2013). This could be partly due to the fact that litigation under the WTO is quite expensive and many of the African nations would rather avoid the associated expenses (Bown & Hoekman, 2005). In addition most African countries including Zambia, lack the legal capacity to make an effective fight before the

³⁴ See www.tradebarriers.org/complaint/NTB-000-379

dispute settlement body, while their small markets prevent active litigation by other contracting parties (Grynberg & Motswapong, 2012). Nonetheless, Shaffer (2003) claims that if Zambia participated regularly in the dispute settlement body through litigation, she can have good chances of shaping the application and interpretation of WTO law to her benefit.

The KSU border also implements rules on sanitation, certification and standardization to safeguard plant, human and animal health, but these rules are a major source of TTCs (Keyser, 2012). The inspections related to the above rules have a negative effect on cross-border trade, despite their ability to promote confidence in bilateral trading between Zambia and DRC. The negative side comes about because inspectors require travelling from their central locations covering long distances with cost implications. In addition, the trading environment and requirements on both sides of the border, has variations which increase costs due to lack of predictability and transparency.

On the other hand, sudden import/export bans from either side of KSU tend to disadvantage SMEs with extra costs. These extra costs arise because SMEs have limited access to financial resources; they lack economies of scale and many lack access to information for them to be compliant (Hellqvist, 2003). Many times authorities implement decisions on import/export bans with little if any notification or consultation (Keyser, 2012). The highlighted sudden bans are a violation of Article X of GATT 94, and are also against the provisions in the TFA under Article (I) & (II), which require publication of rules and prior consultations³⁵.

Respondents at KSU complained that banning of imports and exports always results in loss of business and marooning of trucks. Consequently, some respondents were of the opinion that, any changes in regulations should have a lead time of ninety days before implementation.

The numerous KSU border challenges encountered by SMEs have led to an increase in informal trade between the DRC and Zambia. The high cost of abiding with regulations is often cited as a reason for agricultural products such as maize using informal export

³⁵ The new TFA will only come into force after two thirds of WTO contracting parties ratifies it.

channels especially when done by small scale traders (WB, 2014b). The exorbitant crossing fees of US\$100 per truck also contribute to the avoidance of the border facilities resulting in promotion of informal trade.

There are other regulations which promote informal trade at KSU, especially in the agricultural products trade, like the need to register with ZRA in order for one to export.³⁶ Such trade constraining rules prevent creation of employment opportunities, and are a major cause of poverty (Mupesen, 2013). According to Mupesen (2013), forty percent of trade carried out at KSU border is informal due to constraints such as the need for certification, which add to punitive administrative requirements. The numerous administrative requirements make trading expensive, promote corrupt activities, and bring about revenue leakages that disadvantage Governments on either side of the border (Keyser, 2012). The high number of documents required to cross KSU is another factor that escalates costs at the border resulting in informal trading. According to the WB (2014a), Zambia and DRC ranked 163 and 171 respectively out of 188 countries in trading across borders. The poor rankings are due to high documentary requirements and lengthy procedures on either side of KSU among other reasons. The numerous documentary requirements are also against COMESA Treaty's Article 70(a) which states that:

'..Member states should undertake to initiate trade facilitation programs aimed at reducing the cost of documents and the volume of paper work required in respect of trade among the member states'

The requirement for several documents in agricultural products trade, which provide incomes to rural populations, is a special source of concern insofar as trade facilitation is concerned. The typical trade document requirements for food products and crop inputs at Zambia's KSU are as highlighted in Table 5 below:

³⁶ Most small scale traders are not registered with the ZRA and usually resort to informal means of participating in the cross border trade.

Table 5: Agricultural Document Requirements at KSU Border – Zambian side

| Food Staple Requirements | Crop Inputs Requirements |
|--|--|
| Trade Permits (Import/Export Licenses) | Product registration |
| Phyto-sanitary Certificates | Trade permits (Import/Export Licenses) |
| Non-Genetically Modified Organisms (GMO) Certification | Phyto-Sanitary Certificates |
| Quality Assessments | Non-GMO Certification |
| Filling of Customs Documents | Quality Assessment |
| Original Invoices | Filling of Customs documentation |
| Manifests | Original Invoices |

Source: John Keyser (2012)

In order to obtain the listed documents in Table 5, many traders spend money and undergo various challenges that include delays and indirect costs.

The Zambian export permits for maize costs US\$0.30 per ton and is only obtainable at a few places like Ministry of agriculture and livestock headquarters in Lusaka (WB, 2014b). These permits are valid for one month only. If a trader fails to exhaust the exportation in the stipulated period, fresh permits have to be sought with cost implications. The requirement for obtaining permits from specified central places and the short window for carrying out exportation works against trade facilitation. In like manner, the rule that requires every truck carrying export agricultural products to have an original copy of the permit is non-trade facilitating. This is because such rules increase TTC costs for traders who buy commodities in bulk, and who require several trucks to ferry the merchandise to DRC (Keyser, 2012).

The cross border trade at KSU also requires another document for exportation of crop products, in the name of phyto-sanitary certificate. The Zambia Agriculture Research Institute (ZARI) has the sole responsibility for issuing phyto-sanitary certificates, and sells them for US\$62 for a booklet with twenty certificates. Every truck exporting Zambian crops or crop products needs sanitary certification. The requirement for each truck to carry its own sanitation certificate is also non-trade facilitating, because of extra costs contrary to Article VIII of GATT 94. The designation of ZARI as the sole issuing body also

gives rise to other costs especially for people located far away from Lusaka. It can take two or more weeks to have a certificate issued resulting in trade impediments.

Interviews carried out at the border further revealed that public health officials on either side of KSU have great influence on decisions pertaining to SPS matters, relegating trade facilitation to second place. This comes about despite the requirement by WTO's SPS agreement that, in case of conflict, contracting parties should use the least restrictive measure. Nonetheless, it is ironic to note that under the TFA, balancing public health and trade facilitation objectives is emphasized. The TFA calls for increased collaboration between customs and public health officials, which factor could help the trade facilitation cause at KSU. Facilitating trade in agriculture products is especially important to Zambian peasant farmers in the countryside, who rely on crop products for their livelihoods. Consequently, cooperation in agricultural trade can reduce poverty levels and is promoted in COMESA's Article 4 (5) (d), which calls for 'cooperation in the export of agricultural products among member states'.

Zambia's agricultural trade with DRC at KSU is further complicated by mandatory non-GMO certification. Any Zambian trader with an ambition to obtain export permits needs also to have non-GMO certification even if the export destination, DRC, does allow GMO products to freely enter that territory (Keyser, 2012). The GMO certifications, therefore, are an impediment to trade facilitation at KSU too.

On the other side of the KSU border, the DRC rules require Zambian agricultural products crossing into that country to be derived from areas devoid of pests and diseases. Grains such as maize entering DRC need fumigation certificates in addition to phyto-sanitary certificates among other documents.

However, the need for Certificates of Origin does not arise when Zambians trade with Congolese, because the DRC has not implemented the SADC and COMESA FTA arrangements. Consequently, Zambian and Congolese traders do not need to purchase the Certificates of Origin from ZRA head office because trade takes place on MFN basis.

Some regulations in Zambia were also found to work against trade facilitation during the study because they increase trade costs. For instance, *Section 47 (5)* of the Customs and Excise act states that:

‘Every exporter shall, if he is requested to do so by an officer, produce for his inspection all invoices and other documents relating to any goods entered for export in terms of section 47 and shall at his own risk or expense unload, reload, remove to or from any place indicated by the officer, open, unpack and close up such packages as the officer may require for examination and all charges incurred in the examination shall be borne by the exporter’.

This section is another violation of Article VIII of GATT 94 because it imposes unnecessary costs. In addition, it does not stipulate some reasonable amount of care to be exercised by customs officers in order to minimize losses by traders.

The other complication at KSU border is the non-harmonization of documentary requirements between Zambia and DRC. This too contributes to costs and delays on both sides of the border. Therefore, there is need not only to harmonize the documentation, but to also minimize the number of documents required to process the goods in order to conform to COMESA’s Article 4 (6) (b). This provision in COMESA calls for harmonization of rules in order to enhance trade facilitation. The provision could be cardinal in controlling costs at the KSU border.

Additional border clearance costs stem from lack of adequate staff at KSU, which results in delayed clearances. The existence of four road blocks within a stretch of thirty two kilometers near KSU (Zambian side), also contributes to trade costs because of increased transit times and corruption by some unscrupulous officials at these road blocks.

4.11 Cost Implication of Trade Delays and Related Challenges

The clearance of goods at KSU takes longer than one day on average because of various challenges at the border post. Some challenges arise from lack of documentation, system failures, lengthy archaic procedures and delays in paying assessed taxes. These challenges work against trade facilitation norms and need elimination.

According to Hummel (2001), one day's delay in the movement of goods is equivalent to a tariff hike of 0.8 %. This means if every importation at KSU was delayed by a day, the total cost to Zambian importers would be about US\$15.2 million in 2013 alone³⁷. The time-cost alluded to above may come about due to the depreciation of goods, as they get delayed at the border especially if the goods are perishables. Costs can also arise due to the need by industries to hold higher inventories to mitigate border delays³⁸. Other economists such as Pearson (2011) estimates the cost of delaying a truck at the border for a day at US\$200.00, while the ECA (2013) arrived at US\$140.00 as the resultant cost. Other factors contributing to delays include congestion, regulations and extensive documentary requirements. Delayed trucks may also be subjected to direct costs such as demurrage charges by transporters, because of contractual obligations.

According to the WB (2013) doing business report, firms operating in Zambia requires seven documents to export and a total of eight documents to make an importation. It takes a total of forty four days to export goods out of Zambia, and some forty nine days to import into the Country (WB, 2013). In addition, exporting goods from DRC requires eight documents, while nine documents are needed for one to make an importation into DRC (WB, 2013).

This requirement for numerous documents, and the period for importation/exportation tend to make Zambian exports expensive and uncompetitive in global markets. This case study also revealed that, on average customs clearances at the border takes two to seven

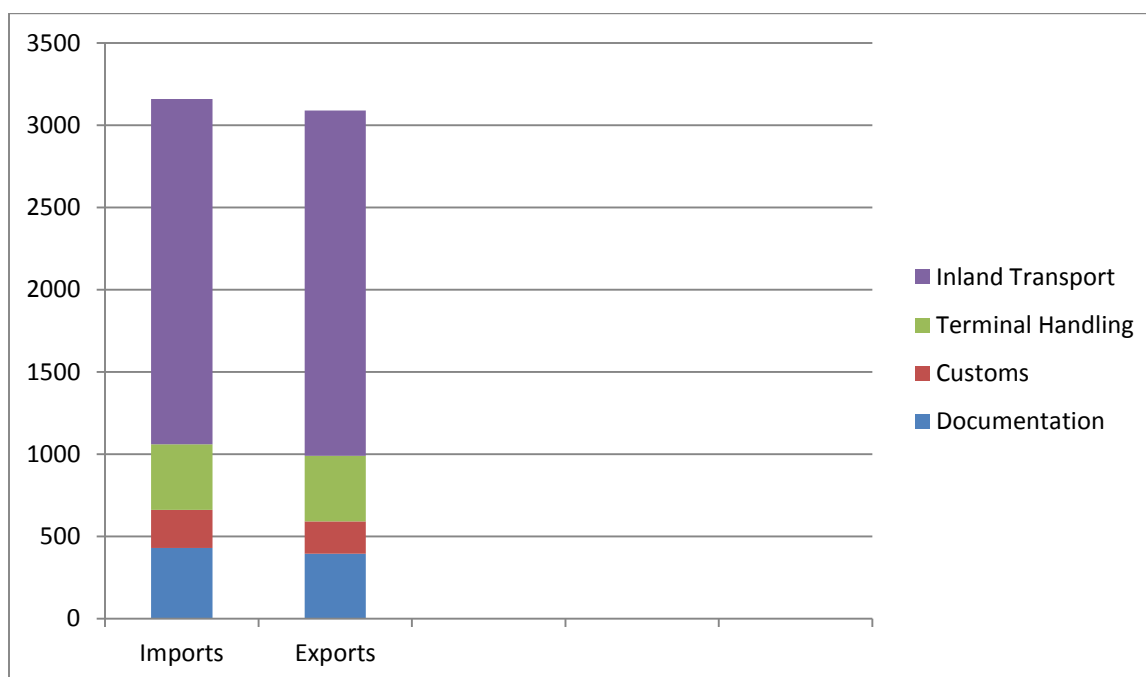
³⁷ The figure has been calculated taking into account Zambia's total DRC imports of US\$1.9 billion in 2013

³⁸ Some goods such as newspaper publications are time sensitive and loose value from the date of publication.

days which is too long a period. This period is above the 1.5 days provided for in the ZRA client service charter for clearance of declarations by customs.

According to the ECA (2013), transportation, customs procedures and documentation are major sources of delays and costs affecting trade facilitation at borders such as KSU. Figure 6 below highlights the ECA findings in terms of costs for exportation and importation by the business community.

Figure 6 Importation and Exportation Costs by Component in Zambia (2012)



Source: ECA (2013)

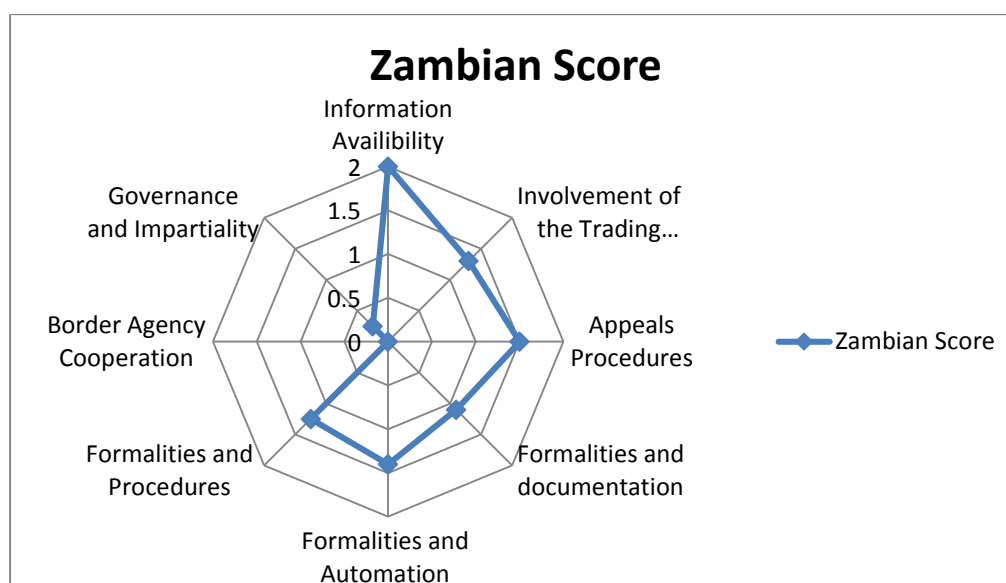
Fig 6 above shows that the cost of exportation and importation to and from Zambia is dominated by transportation. However the export cost is somewhat lower than the cost of importation. Nonetheless, both costs are escalated because Zambia is a landlocked country (ECA, 2013). The survey done at the KSU, also confirmed that in terms of dwell times, exports spend less time than importations because the required process to import is longer³⁹. The average cost of importing and exporting through Zambian borders such as KSU, has actually been increasing in comparison to similar countries (ECA, 2013).

³⁹ Imports are subjected to stringent processes because of revenue implications.

This fact is as highlighted in figure 5 on page 44 above. Consequently, there is need to cut administrative measures, or for political will to be exercised in order to reduce documentation. This can contribute to reduction of time and cost of trading. This can also prevent numerous documents' preparation necessary to trade in Zambia, leading to significant cost reductions. The customs procedures to clear importations and sometimes exportations, are also somewhat long leading to unnecessary costs. Consequently, there is need to streamline customs import and export procedures in order to reduce processing time. Reduction of trade related costs at KSU can push the cost of imports and exports downwards. This in turn can result in easier access to imports resulting in cheaper intermediate goods, increased FDI, access to new technology and increased exports (ECA, 2011). The overall effect of such a scenario would be lower consumer prices, trade expansion and job creation (Hellqvist, 2003). Zambian firms can even develop economies of scale due to expanded trade opportunities.

The OECD (2013) recently analyzed trade facilitation measures in Zambia, and concluded that there is good progress being made in terms of automation and information availability. This is as highlighted in Figure 7 below:

Fig. 7 Zambia's trade facilitation performance: OECD indicators. Where 2 = best performance



Source: OECD Trade Facilitation Indicators in Zambia (2013)

Fig. 7 above shows that Zambia has been making good strides to avail information to the trading community, and has been increasing the level of automation to speed up goods conveyancing at borders such as KSU. By contrast, she lags behind in promoting border agency cooperation and in governance.

According to OECD (2014), the areas that could have better impact on trade flows at KSU include reduced documentation, automation and trade information availability. Other benefits can come from improvements in procedures and governance, through promotion of impartiality by border agencies. The OECD (2014) report further asserts that involving the trading community in policy formulation, use of advance rulings and development of proper procedures of appeal, can also make positive impacts on trade facilitation.

In line with these recommendations, Zambian customs has been using radio programs, print media as well as a website in addition to a call center established at customs head office, to disseminate more information.⁴⁰ The OECD (2014) also claims that Zambia's continuation of efforts to harmonize and simplify trade documents will confer benefits to traders and the national economy. This assertion is supported by Article 69 (a), Chapter nine of the COMESA treaty which states that:

' The member states must agree to simplify and harmonize their trade documents and procedures in accordance with the provisions of this chapter so as to facilitate trade in goods and services within the common market by reducing to a minimum the number of trade documents and copies thereof...'

Many respondents of the KSU survey were also of the opinion that automation was a good facilitation tool that had helped in reducing processing times. This was the case despite constant problems with power and system problems that impacted negatively on trade facilitation. In like manner, respondents pointed to the 2013 National Customs to Business Forum held in Lusaka, as an important development in promoting collaboration

⁴⁰ The call center at +260 971 281 111 and +260 961 281 111 as well as the ZRA website at www.zra.org.zm provide vital information on requirements to traders.

between public and private sectors⁴¹. The forum was identified as a good trade facilitating tool.

By contrast, documentation requirements and numerous KSU border procedures are seen by many freighters and business people as a hindrance to trade facilitation. Some documents such as phyto-sanitary certificates are obtainable only at ZARI, with a limited number of officers authorized to issue them. Obtaining such permits requires travelling to Lusaka, a factor that involves expenditures on transport, food and accommodation plus actual permits costs. When one adds the requirement for such things as fumigation costs, and road block impediments the TTCs at KSU tend to be extremely high. Likewise, some procedures at KSU seem to be out of date and are exacerbated by substantial paper work. For Instance, upon clearance with customs, a trader is expected to complete the entrance or exit register detailing his/her name. The register also requires capture of the registration details of the vessel, one's passport number and the border clearance details. In the event of a trader completing all processes except filling the register at the gate, merchandise may spend an extra night at the border. This is an example of some delay, coming despite the fact that information to be captured in the registers is a duplication usually captured in the AW system. Besides duplication, the current practice of submitting documents to each and every agency at the border was also seen to be archaic by many stakeholders. This is because the practice forces traders to have numerous sets of original documents to be submitted several times at great cost, instead of a single set to be submitted once.

There is also a need to improve governance and Impartiality by border authorities. Most respondents were of the view that border agencies lacked proper governance, and were partial in their decision making. Impartiality was also seen by some respondent to be the basis for corruption obtaining at KSU.

⁴¹ The national forum was held on 26th April 2013 and was a resounding success in attracting private and public sector economic actors. The USAID's Southern Africa Trade Hub sponsored the initiative.

4.12 Customs, Corruption and Trade Facilitation

Corruption in KSU customs is a reflection of poor integrity levels in Zambia, which is ranked number 85 out of 175 countries by the 2014 Transparency International corruption index report⁴². The DRC on the other side of KSU is ranked number 154 out of the 175 countries. Corruption in both countries permeates the public and private sectors as well as administrative and business environments, with bribery especially common at customs entry points⁴³.

KSU customs is usually singled out when local communities make allegations of border corruption, because customs is extremely visible at the border, and sometimes due to customs official's behavior. The behaviors include deliberate delays that suggest extra judicial payments. Numerous stakeholders consider KSU customs procedures as non-transparent; and even policy-makers have difficulties comprehending some customs' policies (Creskoff, 2008). This difficulty comes about because the policies support restrictions, and enforce barriers to trade breeding corruption, which in turn works against trade facilitation through delays and extra-judicial payments also (Collier, 2008).

Results from a survey at KSU show that seventy percent of respondents agreed with the existence of the scourge while twenty percent were in disagreement. However some ten percent of respondents were not sure. Some respondents even claimed that drivers and CBs were in the forefront of initiating fraudulent activities which affect the flow of cargo across the KSU border.

The existence of corrupt practices on both sides of the border has a double impact in stifling trade between Zambia and the DRC. This comes about due to the fact that non-payment of bribes may sometimes result in deliberate delays by officials concerned. These delays tend to increase TTCs while actual bribe payments also increase the TTCs factors which work against trade facilitation. Consequently, the existence of corruption at KSU destroys custom's legitimacy, and limits the capacity of customs officials to facilitate trade (Mikuriya, 2003).

⁴² See <http://www.transparency.org/cpi2014/results>

⁴³ www.kpmg.com/africa/en/kpmg-in-africa/pages/2013-africa-country-reports.aspx

According to Mikuriya (2003), integrity is vital in KSU customs because it can create prosperity, promote good governance and may protect society from various ills. It is therefore paramount that KSU customs works to preserve high levels of integrity among officials, for effective and efficient discharge of responsibilities. The use of complicated procedures; lack of publicity on customs laws; inadequate control systems and increased human intervention in daily customs procedures as opposed to automation at KSU has a tendency to promote corruption (Hellqvist, 2003). The other factor promoting corruption is the wide discretionary powers given to Customs officials. Discretionary powers come through customs procedures that are not well defined. For instance the customs procedural manual in Section 601.062 recommends KSU customs officials to use discretion and it reads as follows:

‘...Special Deliveries are allowed at the discretion of management and under very special circumstances, goods may be released from customs control after taking into consideration the urgent nature of the consignment and the credibility of the tax-payers...’⁴⁴

Provisions like the one highlighted above, can be abused by officials for personal gains. On the other hand, lack of clarity with regard to certain pieces of legislation, leads to multiple interpretations of the law which in turn breeds corrupt activities that stifle trade facilitation. One such example is Zambia’s CAP 322’s Section 34 (1)(b) which states that:

‘...Any person making an entry of any goods shall produce all such documents as may be required by the customs services division..’

This section does not explicitly prescribe the required documents by the customs division and disparate border officials can interpret it differently. This is especially so because even the customs procedural manual only states in Part 601.045 that:

‘Entries in Form CE 20 must always be accompanied by such other supporting documents to assist in determining the correctness of declared value. These may include Commercial Invoices; Contracts; Bills of lading; Airway Bills; Rail Advice Notes and correspondence where necessary’⁴⁵.

⁴⁴ Management refers to station managers and their deputies.

⁴⁵ CE 20 refers to Custom and Excise Form 20

The two provisions may be subjected to multiple interpretations in terms of documentary requirements. It is possible for an officer to demand unnecessary documentation causing delays as a way of eliciting bribes. According to Hellqvist (2003), multiple interpretation of regulation avails space for corruption and promotes bad governance. Consequently KSU customs needs clearly defined rules, and regulations to minimize incidents of corruption and as a way of enhancing trade facilitation.

Further, neither side of the KSU border supports a mandatory bank transfer tax-settlement system. This results in less transparency and a need for face-to-face contact, factors that promote corruption. Taxes settled through the bank may not only reduce costs, but may also force border authorities to receive payments commensurate to services rendered in line with GATT Article VIII or Article VI in the TFA (WB, 2014b). Other respondents to the KSU survey also suggested the need to reduce face-to-face contacts between state agents and traders by automating some procedures. One example of automation can come through e-payments. Lately, Zambia has promoted e-payment systems using various banks, though the practice is not wide-spread among SMEs.

The lack of clarity on procedures, with regard to pre-inspection of motor-vehicles by Zambia Bureau of Standards (ZABS), before clearance by customs causes problems too. Usually, customs surrender motor-vehicle system-registered declarations so that ZABS ascertains standards conformity. Any discrepancy in documentation leads to heavy penalties by ZABS, sometimes un-proportional to the violation. The un-proportional penalties violate GATT 94's Article VIII. In order to avoid parting away with large sums of money, some traders opt for negotiations leading to corruption.

Nonetheless, and in line with WCO efforts, KSU uses various tools to reduce corruption levels. These tools include the Arusha Declaration which states that:

'Customs officers should be issued with a code of conduct, the implications of which should be fully explained to them. There should be effective disciplinary measures, which should include the possibility of dismissal'.

In response to this WCO requirement, KSU has in place a code of ethics that stipulates the expected conduct of customs officials. Likewise, the customs division has formed an

integrity committee at KSU in a bid to address corrupt activities. In addition, the customs division intends to implement a centralized declaration clearance system that aims at examining all declarations in two central places. The centralized processing is expected to have two centers, one in the north and another in the south of the country. This system is expected to reduce face-to-face interactions between officers and traders leading to a reduction in incidents of corruption. Other stakeholders surveyed at KSU proposed the holding of regular corruption awareness meetings, involving government officials and traders to address this scourge.

Correspondingly, (De Boeck, 2013) claims that, fighting customs related corruption is a recognized priority by the Zambian and Congolese Governments in order to ensure smooth flow of trade. Consequently, there is need for both Governments to sustain the fight against corruption by introducing specific legislations such as promotion of border agency cooperation.

4.13 Border Agencies and Coordination at KSU

The Zambian side of the border at KSU has about eleven Government agencies including;

- i. The office of the President;
- ii. The Drug Enforcement Commission;
- iii. Zambia Police;
- iv. Customs and Excise Division of Zambia Revenue Authority;
- v. The Immigration Department;
- vi. The Department of health;
- vii. The Zambia Environmental Management Authority;
- viii. Ministry of Agriculture;
- ix. RTSA;
- x. Ministry of Works and Supply Weigh Bridge Department; and
- xi. Zambia Bureau of Standards ZABS.

The first three agencies play an indirect role in Zambia's international trade, while the remaining eight agencies have a daily interaction with traders. However, each of these eight agencies enforces different pieces of legislations, with power to detain consignments in case of transgression of the respective legislations. Compliance with these disparate legislations at KSU tends to increase TTCs (Kieck, 2010). The presence of numerous offices and officers to which a trader has to present documentation tend to cause delays too. Many stakeholders surveyed at the border also complained of getting different treatment from these officers, depending on their motivation and orientation. The situation is exacerbated by the fact that officials from the various state agencies get different remunerations and their conditions of services differ significantly. This results in limited cooperation. With the exception of Customs, the rest of the agencies operate manual systems, a factor that makes timely sharing of information impossible. This state of affairs is a source of concern and a major contributor to delays and TTCs.

An efficient border management system needs closer working relationships between various Government agencies (Mackay, 2008). Such relationships, can be achieved if some legal framework exists to promote appropriate coordination mechanisms. In the case of KSU, there is no legal basis for public agencies' cooperation. However, Article VI

and VIII in the TFA have actually provided for CBM, so as to improve border operations in WTO contracting parties which include Zambia. The coordination required in the border agencies can be achieved through intra-agency, inter-agency and cross-border types of cooperation (Shayanowako, 2013).

4.13.1 Intra-Customs Cooperation

Intra-agency cooperation involves coordination at different levels of the hierarchy, in the KSU customs border operations both horizontally as well as vertically within the station, region and at national level. This is about information flows between local customs officials, the station units to station management and subsequently to regional and head offices. Intra-customs cooperation is essential to achieving high levels of efficiency and its absence can spell problems for KSU customs operations. This type of coordination exists to a certain extent in KSU customs operations, based on procedural requirements.

The existence of good intra-agency cooperation is highlighted by the appeal mechanism. This can begin with a cross-border trader making an appeal to the station manager in the event of dissatisfaction with processes such as valuation. The process requires the manager to make consultations with the controlling officer who in-turn must consult the Examining Officers. The end result may require sending at least two lower ranked officials to re-examine a consignment physically and to produce a report that would see its way to the station management for a decision. In the event a trader is not satisfied with the station manager's ruling on a matter, an appeal is made through the regional managers' office and if necessary to head office. Throughout such appeal processes, reports are written at station, regional and head office level and the coordination was quite vivid. The only disadvantage with the system was the lengthy period needed to resolve appeals. The delays and attendant costs in the appeal process was a major concern especially when any issue got referred to regional and head offices. Lack of skills at the station was cited as a major reason for appealing to higher offices⁴⁶. The appeal system is, however, one of the best practices obtaining at the KSU border and is in conformity with Article IV in the TFA.

⁴⁶ The border at KSU does not have an officer specializing in customs valuations or in classification of goods and therefore disputes may require reference.

Nonetheless, other respondents talked to during the study, expressed reservations about the level of customs cooperation which they felt was not adequate. For instance, returning residents who clear goods without any duty payments require an interview to ascertain their eligibility. Such an interview may be conducted at a third party customs station, with the client availing personal documentation, while goods are under clearance at KSU. Some respondents, pointed out that client interview and verification results of passports, done at third party stations get subjected to queries. It is not uncommon for KSU customs officials to demand that interviewers based at the other stations, contact them for discussions, to explain their findings instead of relying on the generated reports. This comes about due to mistrust amongst customs officials.

This kind of approach at KSU tends to cause inefficiencies, apart from attracting demurrage charges on marooned trucks carrying personal effects of returning residents. Other interviewees revealed the absence of a mechanism for a bottom-up approach, in resolving various KSU issues. Even where junior officers at KSU have identified particular operational problems, escalation to senior officials is difficult, thereby frustrating trade facilitation objectives. Nevertheless, intra-customs cooperation was found to be less challenging when compared with cooperation between agencies.

4.13.2 Inter-Agency Cooperation

Article VIII of the TFA promotes this type of cooperation⁴⁷. It requires closer working relationship between various Government agencies, which may be exhibited for instance, by joint physical inspections. Such kind of cooperation is vital in avoiding duplication and in building unity of purpose (Shayanowako, 2013). While it is common to see some level of cooperation between the eleven Zambian agencies at KSU, a survey done at the border revealed that the current level of coordination was not optimal. Most respondents cited lack of inter-agency cooperation as a contributing factor to border inefficiencies, with negative effects on traffic flow. The best example cited by respondents was on physical examination of goods which is usually done by customs alone. Moreover, most of the

⁴⁷ SADC has also developed CBM guidelines to assist MS in border management (SADC, 2011)

border agencies operate manual systems with the exception of customs, a factor that contributes to difficulties in reaching optimal levels of cooperation.

In addition, the Zambian Government has not enacted legislation promoting inter-agency cooperation, resulting in a situation where no agency can claim authority to control others. The lack of a national policy, with regard to cooperation between border agencies has created numerous challenges at KSU border post. This lack of a legal-framework promoting inter-agency cooperation among the eleven agencies, also means that the agencies do not have an obligation to cooperate with one another. The end result is that each agency at KSU implements policies and procedures in accordance with its departmental legislation with no regard to others.

Consequently, the management of the KSU border processes is fraught with delays, duplications and inefficiencies due to non-cooperation. These factors lead to failure in meeting the best trade facilitation criteria. Additionally, the disoriented border operations prevent efficient deployment of resources, causing higher government expenditures. These anomalies or omissions cause difficulties for the trading community, resulting in extra costs that get transferred to consumers in Zambia and the DRC.

The only noticeable cooperation among agencies happens in time of crisis. This was the case during funerals of two truck drivers killed at the border by bandits. Nonetheless, Zambia intends to put legislation in place that will coerce border agencies to cooperate. An interview with a Senior Zambian Customs Officials in the international liaison section revealed that a draft bill on CBM was ready and was awaiting cabinet approval in the last quarter of 2014. The designated lead agency in the draft bill is the customs division. It is envisaged that this will lead to better trade facilitation at KSU, and may promote cross-border cooperation.

4.13.3 Cross-Border Cooperation at KSU

Cross-border cooperation is provided for under Article XII of the TFA and in Article 4 (2) (a) of the COMESA treaty. Cross border cooperation is also enshrined in the SADC Protocol on trade of 1996. The process requires coordination on the part of Zambian Government agencies with their counterparts in DRC. In addition, it also promotes

cooperation between Zambian agencies with the international and regional bodies that participate in border management matters (Shayanowako, 2013). Some level of cooperation was observed during the study of the border. For instance OFIDA officials physically come to pick documents acquitted by Zambian customs, every day at different intervals for verification purposes⁴⁸. Additionally, the two customs administrations collaborate in controlling congestions at KSU.

However, the level of cooperation is not optimal. Data exchange requires to be done electronically in order to avoid delays and to reduce TTCs. The current practice by OFIDA officials, of crossing the border at intervals to pick Single Administrative Document (SADs) acquitted by Zambian officials, is a source of delay working against trade facilitation. During an interview with another senior customs official incharge of data management at the Zambian customs head office, it was revealed that once in a while, OFIDA officials also visit Lusaka to pick electronic data on flash disks. Such an expensive way of exchanging information may not be very useful for trade facilitation. However, the official pointed out that plans are in place to ensure digital data exchange, using the AW module probably before the end of 2014. This should be encouraged because customs operations on either side of the border are automated.

The ability to ensure cross border cooperation, however, should begin with inter-agency cooperation. A well-developed inter-agency cooperation on either side of the border is a prerequisite for enhanced cross-border cooperation.

The Congolese side of the border, like KSU (Zambia), is represented by numerous agencies that implement controls on trade. The agencies include Congolese National Police; Border Police; General Directorate of Customs and Excise (OFIDA); General Directorate of Migration; Public Health Services; The Congolese Army and Congolese Office of Control. The specific mandate of each of these agencies at KSU (DRC side) is not spelt-out in clear cut terms (De Boeck, 2013). In addition there is lack of clarity on the standard operating procedures of each of the agencies. According to De Boeck (2013), crisis times tend to reveal confusions, because none of the border agencies in DRC

⁴⁸ OFIDA is the acronym for DRC customs division

seems to be clearly incharge of the border proceedings, highlighting the need for inter-agency cooperation.

At regional level, COMESA has been instrumental in supporting trade facilitation, including CBM mechanism developments at various border posts in order to improve trade (Mustra, 2011). On the other hand, SADC has gone even further in promoting trade facilitation, by developing CBM guidelines to assist entry/exit points like Zambia's KSU to improve border management (Kassee, 2014).

CBM is a useful system in that it lowers overall border management costs, it enhances security, it improves intelligence gathering and it is also useful through its ability to improve border enforcement mechanisms. In addition, CBM helps in the rationalization of resources and in the promotion of compliance among traders (Doyle, 2011). The trading community also benefits from a coordinated approach, by border agencies through reduction of informal payments and fast rate of clearances. When such a concept is extended across the border with joint activities, it leads to even better outcomes through an OSBP mechanism.

4.13.4 The OSBP Concept

The introduction of an OSBP at KSU can help to prevent duplications and could simplify procedures on either side of the KSU border. This possibility is viable because Zambia already has the legal framework in Act No. 8 of 2009 and the OSBP mechanism is in conformance with Article VIII (I) (e) of the TFA. Similarly, the existence of an OSBP legal framework in Congo makes the introduction of this mechanism highly likely in the very near future. The implementation of an OSBP at KSU would save as a public good for many traders, and will enhance customs service delivery for traders in the COMESA/SADC regions and beyond.

The OSBP requires an approach that provides adequate resources for joint trade facilitation, combined with effective controls. In like manner OSBP requires optimizing risk management techniques, through consolidation of information from disparate sources. This can be achieved by simplification and harmonization of procedures, in addition to deployment of modern technologies. KSU border cooperation could further be enhanced

by introduction of a common control zone, with combined efforts aimed at doing joint physical examinations. Such combined efforts, have the effect of reducing border dwell times for merchandise, and it also minimizes the risk of damage to goods under importation/exportation. The above-mentioned benefits, therefore, makes an OSBP operation at KSU appropriate. However, such a facility should take into account the needs of the business community including extension of business operational hours (Kassee, 2014). The other benefits from such a facility at KSU include;

- The achievement of an efficient flow of traffic through procedures which reduces time spent at the borders;
- The minimization of the incidents of informal payments;
- Joint inspection of transport vessels because they vessels may only stop once as opposed to stopping twice on either side of the border;
- The significant reduction in waiting time for both commercial and passenger traffic; and
- Improved coordination between the two customs authorities.

The past but recent developments that led to deaths of a Zambian and a Zimbabwean driver at KSU, point to lack of cooperation between Zambian agencies and their counterparts from DRC (Syampeyo, 2014)⁴⁹. Criminal incidents like the murdering of stakeholders have the effect of stifling trade between the two countries, apart from affecting the movement of goods to and from DRC. The death-incidents at the border highlighted above, which led to riots and destabilization of traffic flow, should be used by authorities as a reason to increase customs to customs cooperation in line with the TFA's Article XII. Security is a necessary condition for trade to occur which in turn leads to wealth creation and poverty reduction. On the other hand, there is need to adopt more international best practices in order to enhance the trade facilitation agenda at KSU.

⁴⁹ Patrick Mwila, a Zambian driver was killed on 30th January 2014 while Joseph Mwachande a Zimbabwean driver was killed on the Zambian side on 6th February 2014.

4.14 WCO Best Practices and KSU Customs Operations

The current management of KSU border post does not fully conform to international best practices, because of various reasons including lack of training. Introduction of international best practices, in the management of KSU, can reduce costs and time delays at KSU. Such reductions can help in promoting Zambian firm's competitiveness, resulting in the expansion of trade opportunities. Consequently, KSU needs to adopt some if not all best practices in border management to enhance international trading (Kieck, 2010). Some of the best practices in managing borders are promoted by WCO, and the UN agencies among other organizations.

4.14.1 The Harmonized Commodity Description and Coding System

The Harmonized Commodity Description and Coding System (HS Code), is a goods nomenclature system produced by the WCO. Its main objective is to facilitate trade and exchange of information by harmonizing the classification, description and coding of various goods thereby providing a universal economic language. The HS code is an indispensable tool used in collecting customs duties, and in gathering external statistics for decision making. In addition to these functions, it is also used in determining origin and in trade policy formulation. The KSU border post uses the HS Code 2012 which is the latest version of the code. This greatly helps the trade facilitation cause at KSU.

However, many officers at the border post lack comprehensive training in HS goods classification. This is one factor that generates numerous disputes between traders and customs officials. The disputes cause delays because they take time to resolve. This is especially true because traders direct their appeals to regional or even to head office for intervention by few experts within customs.

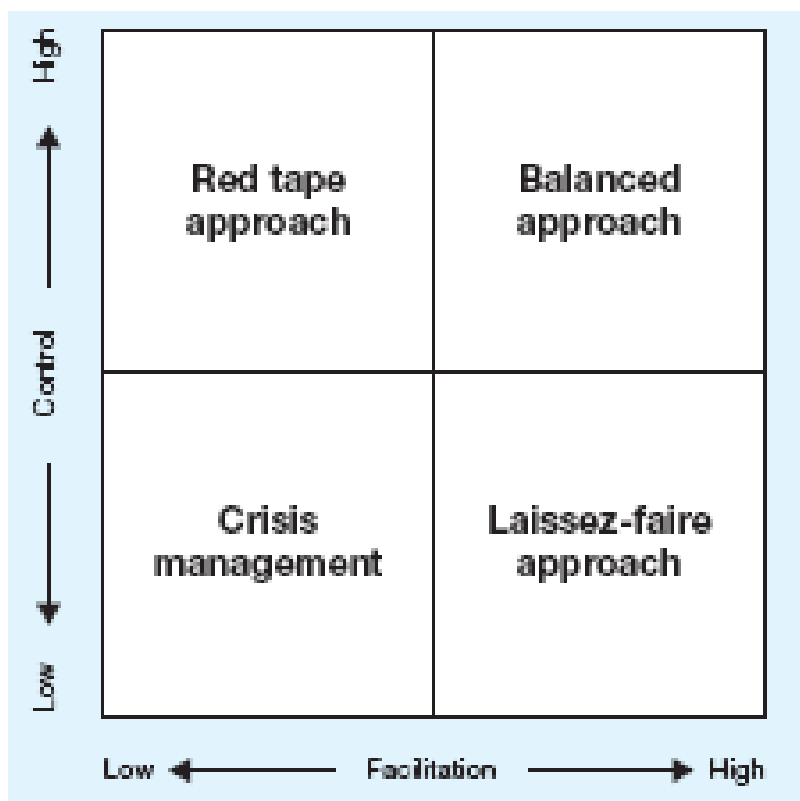
The appeals structure does not only end at customs head office, but sometimes the Revenue Appeals Tribunal and the Supreme Court do hear customs cases. The appeal process at KSU gives a clear, transparent process that is highly predictable in line with RKC provisions.

4.14.2 The RKC

The RKC is one of the numerous international instruments developed by the WCO, with an objective of facilitating international trade (Kieck, 2010). The main function of the RKC

is to promote smooth flow of legitimate trade, by minimizing customs interventions while applying effective control as merchandise cross KSU (Widdowson, 2005). This results in maximum trade facilitation for compliant trade, but also exertion of effective customs control for illegitimate trade at KSU (Widdowson, 2003). This balanced trade control and facilitation approach, is essential for KSU and is graphically highlighted in Figure 8 below:

Fig 8: Balancing facilitation and controls



Source: Widdowson (2003)

Figure 8 above illustrates the fact that KSU customs operation can be more efficient if there is a balance between control and facilitation. Increasing trade facilitation at the expense of trade controls can result in a laissez-faire approach. While relaxing both control and facilitation would lead to a crisis in the management of the KSU customs. On the other hand, increasing controls at the expense of facilitation may result in red tape, a factor that expands TTCs contrary to Zambia's economic objectives. Consequently, KSU should balance control with facilitation, to get maximum benefits from international trade

in line with RKC provisions. Current practices at KSU customs are moving towards the balanced-approach segment as highlighted in Table 6 below.

Further, the RKC encourages customs administrations to accept electronic submissions of data. This technique is in use at KSU because the AW system allows for electronic submission of data as a way of facilitating trade. The RKC also promotes the separation of release from customs clearances, in order to expedite trade in line with the TFA's Article VII. However, customs at KSU border does not allow the separation of release from clearance, because it is not part of Zambian law. This goes against the best norms of trade facilitation.

The other important trade facilitating measure promoted by RKC is the use of AEO. Firms with AEO status tend to have their importations fast tracked at the border, due to their good compliance records with the customs division. The imported goods for AEOs are usually released at the KSU border with minimum information requirements, because Zambian law under *Section 33A of CAP322* permits such procedures. Nevertheless, Zambian customs laws do not allow mutual recognition of regional AEO, which hampers expedited trade at regional level. KSU also allows pre-clearance of goods under *Section 32B of CAP 322*, in line with the RKC provisions that call for pre-lodgment of declarations prior to the arrival of goods. This is useful in reducing truck dwell times at KSU.

The RKC further requires customs administrations to constantly respond to changes in international commerce trends, so as to ensure quicker movements of goods across borders. Similarly, the RKC promotes minimization of controls to ensure compliance through risk profiling; through the shift from physical/documentary checks to targeted checks; and through the efficient deployment of customs services.

Risk management techniques are widely used by KSU, and risk profiling plays a major role in electronic clearance of goods using the AW system. Risk management cuts border dwell times, and reduces incidents of fraud especially through automation which in turn reduces face-to-face interaction. At KSU, the AW system provides for selection of any of the available four lanes depending on the level of risk. This helps officers to make decisions depending on the level of intervention to be made. The green lane is used for

very low risk goods which may require immediate release, while the red lane is used for goods that require physical inspections. The blue lane is used for merchandise that requires PCAs at a later stage. On the other hand, the yellow lane represents medium risk merchandise, requiring only documentary examination before release. This risk management technique is in full use at KSU, and Table 6 below highlights how declarations were profiled in 2013 at this border post:

Table 6 KSU 2013 Risk profiles (Number of Declarations under Each Lane)

| Year | Station | Green Lane | Blue Lane | Yellow Lane | Red Lane |
|------|---------|------------|-----------|-------------|----------|
| 2013 | KSU | 60, 922 | 828 | 7, 153 | 1, 303 |

Source: Zambia Revenue Authority, Customs Data Management and Intelligence Division (2014)

The statistics in Table 6 above shows that most goods (84% of declarations) were cleared with little intervention, while 1.8% of the total numbers of declarations were subjected to physical inspections. Use of such techniques allows customs officials at the border to target high risk goods, while releasing compliant traders (Widdowson, 2005). Risk management is also useful in the efficient deployment of resources, be it manpower or otherwise. Moreover, Zambia customs has also adopted audit based controls to facilitate trade. The customs division created the Audit Business Risk unit to address all goods that are released through the blue lane.

In addition, non-intrusive inspection equipment has been installed at KSU in line with the WCO's Safe Framework of Standards (SAFE), which is also in line with the TFA's Article 12 (Kassee, 2014)⁵⁰. However, other SAFE provisions such as the need for advance electronic information exchange, customs to business cooperation are not being fully utilized for trade facilitation at the border (Cattai, 2003). The KSU border survey also revealed that since the beginning of the year (2014), there has been no stakeholder meeting involving state agencies and the business community. Such meetings are important in finding solutions to common problems.

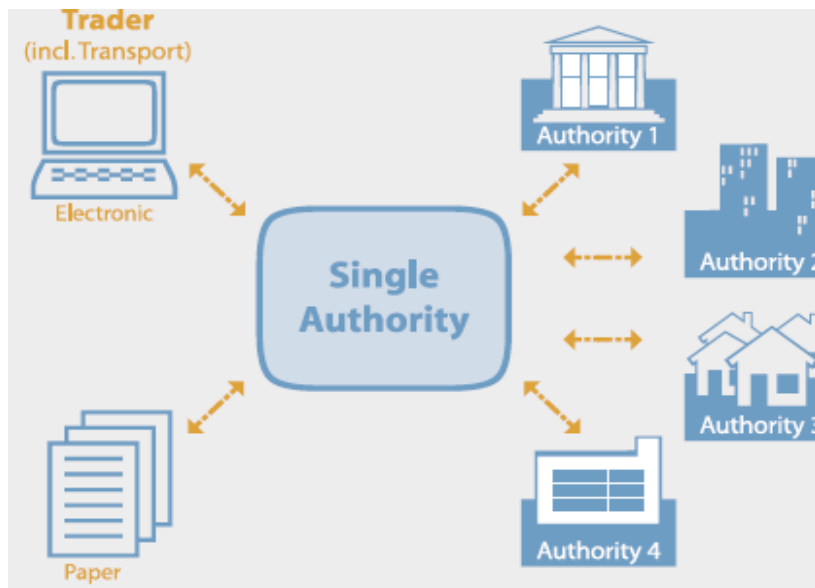
⁵⁰ The non-intrusive equipment is fully installed at KSU but it was not being utilized at the time the study was taking place.

Likewise minimization of information requirement is important in facilitating trade, yet information on either side of the border is hardly rationalized. For instance, if a client exports one million tons of maize carried in twenty trucks, each truck will be required to make a separate declaration to customs with separate permits. This has cost implications, because each customs declaration on the Zambian side would cost US\$10.00 in addition to the cost of permits. This is before taking into account the time factor associated with each declaration. This requirement is at variance with Article VIII of GATT 94 (*On fees & formalities*), because such a consignment could clear on one declaration costing US\$10.00 instead of US\$200.00. Further, several other factors such as the need to submit various documents to disparate border agencies, can push the TTCs beyond the calculated US\$200.00 for a consignment cited above. Consequently, KSU needs to employ other mechanisms, such as the Single Window System promoted by UNECE to streamline operations further.

4.14.3 The Single Window Mechanism

The current system of clearing goods at KSU, involves submitting documents to each and every interested government agency. This process is not only costly, but it is also time consuming. It would help the trade facilitation cause if documents were submitted to a central location for access by every agency. This mechanism of central submission is promoted by UNECE and is usually referred to as the Single Window System. It is as illustrated in Figure 9 below:

Fig 9 Single Window Mechanism



Source: Swedish National Board of Trade (2009)

Fig. 9 above shows that the mechanism allows a trader to submit documents meeting the regulatory requirements through some prescribed means which could be manual or electronic. The submission is deposited once with one selected agency, and the other border agencies with interest in the consignment could then pick up the information from the prescribed authority. This has the effect of producing combined authority on an importation or exportation (Swedish Board of Trade, 2009). If the information is submitted electronically, it may be simultaneously available to Customs, Agriculture, the Health department and the other authorities. This helps in reducing the number of documentation carried by a driver or trader. It also removes the requirement to visit each and every office thereby reducing border dwell times.

This efficient submission of information to border agencies is vital for competitiveness, especially for those firms aiming to tap into GVCs. Having different sets of documents, for submission to various agencies hinders international trade through extra costs. The Single Window concept expedites and simplifies information flow between traders and border authorities, producing mutual benefits for both parties (Swedish Board of Trade, 2009). Government agencies benefit by enhancing revenue uptake as a result of increased compliance by traders. Other benefits to the Government stem from more effective deployment of resources which also improves efficiency. The mechanism also

increases transparency and integrity, which results in reduced incidents of corruption besides boosting trader compliance (Hellqvist, 2003). On the other hand, businesses benefit by a general reduction in clearance times, rationalization of required documents and through predictable application of trade rules.

In order for the single window concept to succeed at KSU, there is need for optimal government agencies' cooperation. This requires political will at high echelons of Government. The Zambian Government is said to have plans to introduce the Single Window concept by the end of 2014. Senior Customs officials, interviewed at Customs head office during the case study, did confirm that plans are in an advanced stage to operationalize the mechanism before the end of 2014. The mechanism is also provided for under Article X (IV) (I) in the TFA, and it is a powerful tool for reducing trade related costs.

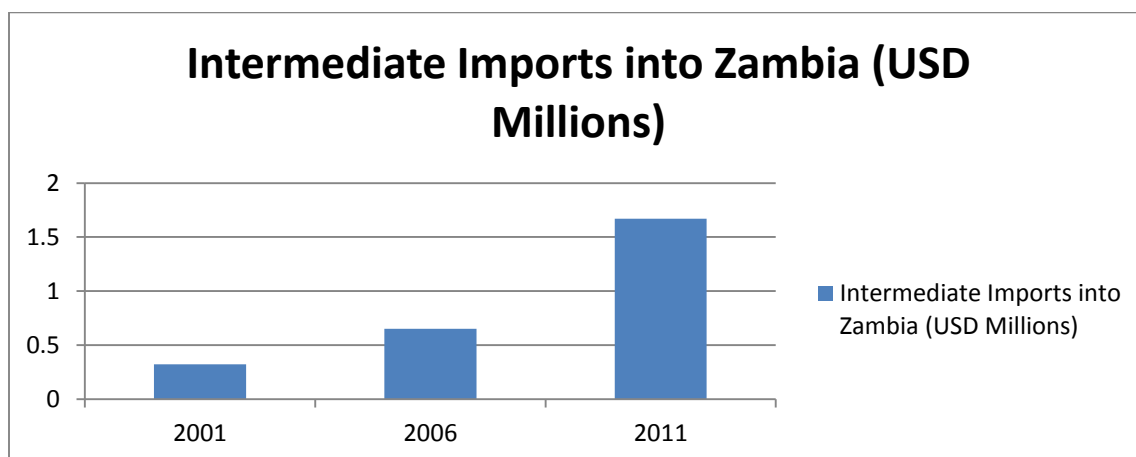
On the Congolese side of the border, the single window concept is in place, but the benefits are not optimal because of parallel processing of paper work (WB, 2010). The existence of the single window mechanism on both sides of the KSU border, and its effective implementation, can greatly reduce TTCs at KSU resulting in many benefits for the Zambian economy.

4.15 Trade Facilitation and Its Benefits

TTCs in terms of both direct and indirect costs are estimated at one to fifteen percent of the value of traded goods (OECD, 2013). Consequently, the elimination of TTCs should be prioritized especially in landlocked LDCs such as Zambia where the cost manifestation is highest. Identifying sources of TTCs is essential in order to design appropriate interventions that could have the greatest impact in eliminating them (OECD, 2013). In the context of Zambia and DRC trade at KSU, the TTCs reflect the economic costs imposed by outdated border procedures, inadequate legal-frameworks and the current requirement for large numbers of documentation. It is therefore imperative that both countries review their documentary requirements as well as the procedures in order to maximize benefits. There is a reduction in terms of possible benefits at KSU, because of border delays, opportunity costs and costs related to complying with regulations.

KSU customs should aim at reducing trading costs in order for the country to increase trade in such goods as intermediate products. This is because trade in intermediates is beneficial through building of a strong export base, which in turn promotes the country's industrialization (ECA, 2013). According to ECA (2013), Zambia's importation of intermediate products has been registering strong growth in the last decade. The intermediate goods trade pattern is as highlighted in Figure 10 below:

Fig. 10 Intermediate products importation into Zambia in selected periods



Source: ECA (2013)

Fig. 10 shows that Zambia's importation of intermediate products, has been steadily increasing, leading to the country's economic diversification and her slow but gradual inception into GVCs (ECA, 2013). For instance, Zambian firms like Chambeshi Metals, Chambeshi Copper Smelter and Sable Zinc Limited import copper ores from DRC, in order to produce copper cathodes for eventual export to various global markets. Any increase in TTCs can dampen smelter operations for industries, involved in adding value to Congolese copper ores, a factor that may hinder economic progression. The other factor, that could hinder economic progression, is the current government's requirement for exporters of copper concentrates to pay a ten percent export tax. While the WTO does not prohibit imposition of export taxes, the current export regime is of limited value to Government. This is because Zambia is a price taker, and her exports do not determine global prices (Piermartini, 2004). Many would be importers of Zambian copper can easily switch to other suppliers such as Chile⁵¹. Consequently, export taxes reduce export volumes while enhanced scrutiny of copper exports extends border dwell times at the expense of trade facilitation. On the other hand, Article V of the SADC prohibits export taxes and Zambia is in violation of this provision. However, SADC MS cannot litigate partly because the SADC tribunal was disbanded.

Trade facilitation is also beneficial to Zambia because it reduces the gap between domestic and international prices, which factor promotes specialization based on competitive advantage. Additionally, trade facilitation may also help Zambian firms to exploit economies of scale, while creating backward linkages that could uplift the country's economy. The efficient flow of goods across borders is especially important, for time sensitive goods such as fresh produce that are commonly traded at KSU border post. In like manner, the flow of raw materials for Just-In-Time manufacturing also requires systems that expedite cross border conveyancing.

Trade Facilitation is also important, because MNCs take into consideration border efficiencies, when deciding on investment locations. Therefore, efficiency at KSU customs

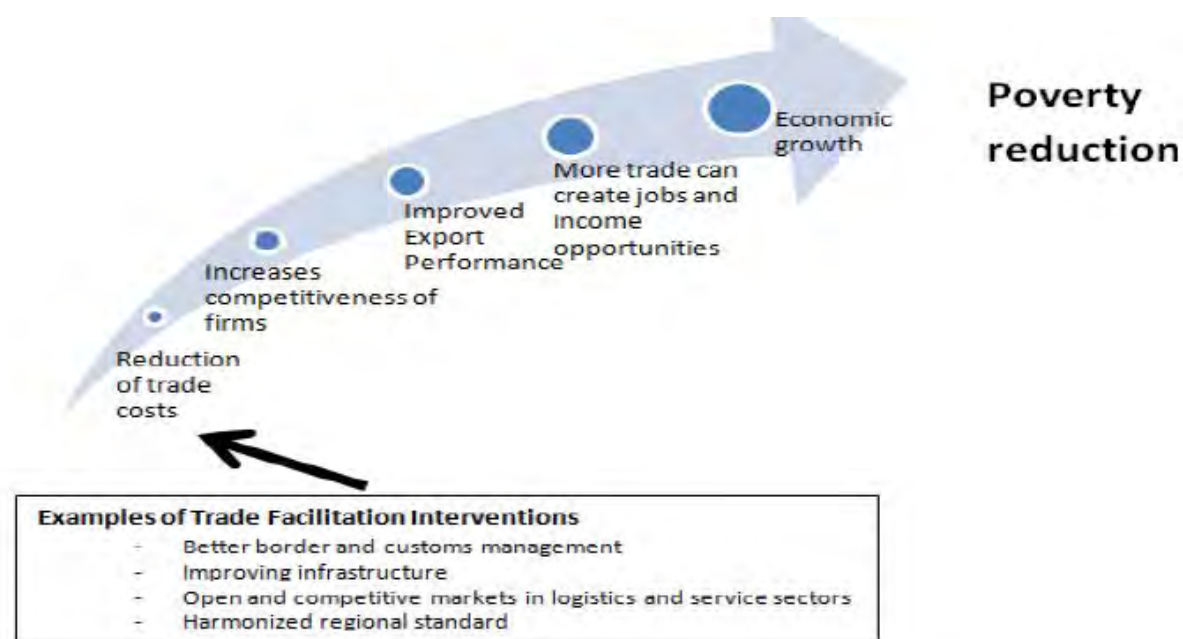
⁵¹ During this case study many top government officials were reluctant to comment on export taxes, because the imposition of the ten percent export tax was a presidential directive. However those who commented on the matter pointed to the ease of collecting export taxes and the beneficiation aspect which creates jobs.

can confer the country with competitive advantage, leading to more FDI attraction (Lamy, 2003).

Customs efficiency, can also allow merchandise to reach retail outlets quickly, at affordable prices to consumers. The other benefits from efficient customs operations include increased revenue uptake, effective regulation of policies and improved growth of Zambian SMEs which otherwise would be vulnerable to TTCs (Hellqvist, 2003). Similarly, trade facilitation confers benefits on the nation through elimination of rent-seeking behavior amongst KSU officials by making border procedures predictable and transparent (Mikuriya, 2003).

According to Rippel (2011), the overall effect of trade facilitation to Zambia is that of economic growth and poverty elimination as highlighted in Figure 11 below:

Fig. 11 Zambia and Trade Facilitation



Source: Rippel (2011)

Figure 11 highlights the fact that trade facilitation works to eliminate trade related costs, which in turn increases Zambian firm's competitiveness resulting in improved export performance. The increase in exports, gives rise to more trade, creates jobs and produces

better income opportunities. The resultant growth in the economy due to efficiencies in the trading chain is important in the reduction of poverty in Zambia. Consequently, facilitating trade in Zambia is highly recommended and should be prioritized.

4.16 Concluding Remarks

This chapter shows that some modern techniques of trade facilitation have been adopted at KSU. The border makes use of risk management techniques and is currently using the 2012 HS code. In addition the border has scanner equipment to help expedite trade, although this equipment was not being utilized during the study period.

Nonetheless, trade facilitation measures at the KSU border are inadequate due to lack of coordination, numerous documentary requirements, lack of a single window system, and existence of corruption. The non-implementation of an OSBP facility at the border and other factors also contribute to trade facilitation challenges at KSU. These factors have a negative effect on the conveyancing of goods across KSU. This sad state of affairs has negative implications on the SME participating in Zambia's international trade, and whose growth is essential in creating employment opportunities in Zambia.

5.0 Conclusion and Recommendations

This study was premised on the assumption that trade facilitation at KSU did not meet internationally accepted standards. However, analysis of the current methods at KSU revealed that trade facilitation mechanisms are improving. For instance, KSU customs operations are automated and risk management techniques are in use. Documents at the border are submitted electronically, while the customs division has made strides in availing information to the public. Information dissemination is done through a call center and a dedicated website. In addition, KSU customs uses the latest goods classification tool (HS 2012), and has recognized some AEOs. Nonetheless, current standards are not high enough, and there are a lot of trade facilitation challenges at KSU.

5.1 Trade facilitation challenges

This study also reveals that a lot of challenges exist in facilitating trade at KSU. Ferrying goods across KSU remains a costly exercise due to lack of coordination amongst government departments. Challenges were also visible in the exchange of data between the two sides of the KSU border post. Currently, data exchange is done manually, which factor contributes to delays resulting in extra costs. Similarly, the lack of a functional RCTG system in both SADC and COMESA does not help the trade facilitation cause. Instead it has a negative impact on transit traffic movement. Furthermore, the limited operation hours at KSU were also seen as non-trade facilitating. This was the case because the limited hours prevent timely movement of people and goods. In like manner, the lack of harmonized procedures at KSU does not support trading but reduces the rate at which goods are cleared. This is compounded by some outdated customs procedures which result in duplicated processes. Other trade facilitation problems arise at KSU due to the existence of some fees like the Motor Vehicle Fee that are charged without service provision.

The requirement for numerous documents to process import and export goods is one other factor working against trade facilitation at KSU. This is aggravated by bureaucracy in the processing of permits to conveyance merchandise such as maize across KSU.

The need for visas at KSU is another factor that fails to support trade facilitation. The visa fees are costly and have a tendency of discouraging people from seeking business

opportunities either side of the border. In addition, the vehicle crossing fee pegged at US\$100.00 per vessel equally discourages traders to cross the border. Many of the highlighted problems prevent expansion of legitimate trade, but rather promote development of informal channels of trade.

5.1.1 Inadequate legislation as a Trade facilitation challenge

This study also established that lack of transparency in some rules and the existence of ambiguous regulations do not help the trade facilitation cause at KSU. On the contrary, such ambiguous regulations cause uncertainties in the trading chain giving rise to corrupt tendencies⁵². Corruption facilitates delays besides increasing TTCs at the border. This in turn has a negative impact on revenue uptake by the Government.

The other legislation that fails to facilitate trade at KSU is the one that limits customs operations to twelve hours per day⁵³. This piece of legislation prevents timely movement of goods and people. The efficient movement of merchandise is further restricted, by complicated procedures such as the need for mandatory physical inspections on goods that have an advance tariff ruling.

5.2 Recommendations

In recognition of the problems highlighted in the previous paragraphs, the following recommendations are hereby suggested:

5.2.1 Regulatory Framework Revisions: There is need to revise the regulatory framework and policies. The introduction of policies that coerce government agencies to cooperate can greatly improve trade facilitation at KSU. In addition, there is a need to identify and make all ambiguous regulations clear.

5.2.2 Enforcement of the RCTG System: There is need to operationalize the COMESA/SADC RCTG systems in order to enhance trade facilitation⁵⁴. This is because

⁵² The requirement for documentation to import or export is not explicit. Therefore CAP322 in Section 34 (1) (b) requires revision to prevent multiple interpretations.

⁵³ The Customs and Excise (Ports of Entry Routes) Order sections 13 and 199 of the Zambian law restricts operational hours from 06:00 to 18:00

⁵⁴ RCTG is provided for under Regulations, Section 138 part (IV), but there are implementation challenges. The CBs are particularly opposed to this proviso, because of competition issues.

such a system would reduce trade costs brought about by duplicated bond requirements. It can also reduce the border dwell times through mutual recognition of national bonds.

5.2.3 Domestication of International Conventions: Zambia ratified the RKC convention in 1999. She has domesticated quite a good number of RKC provisions. The undomesticated WCO provisions, such as those promoting regional AEO needs to be adopted too. In addition, she needs to domesticate and implement more international regulations on trade facilitation. This is one sure way of overcoming current problems at KSU. This can greatly improve smooth movement of goods and people at KSU. There is also a need to introduce modern border management techniques, such as the single window system, OSPB and CBM mechanisms at KSU. The proper use of advance tariff rulings and pre-clearances can equally help the trade facilitation cause. In order to increase efficiency, introduction of any new techniques should be accompanied by training of all government agencies' officials.

5.2.4 Simplification and Harmonization of procedures and Policies: In line with WCO guidelines, Zambia need to further harmonize and simplify border processes at KSU. Consequently she needs to promote capacity building and to maximize ICT usage. It would also be useful if computer captured information is not duplicated in registers at the entry/exit gates.

5.2.5 Improving Skills of Customs Officers: Many customs officials lack important skills for the efficient discharge of their duties. Consequently, there is an urgent need to enhance training of Zambian customs officials, especially in valuation and classification of goods. This can result in expedited movement of people and goods.

5.3 Future Research

Further research has the probability of building on the outcome of this study. However, there might also be need to do a comparative study on trade facilitation between Zambia's borders and the borders in other SADC countries. This can help in identifying and bridging any gaps in regional trade facilitation standards.

References

- Bolhofer, C.E. (2007) 'Trade Facilitation – WTO Law and its Revision to Facilitate Global Trade in Goods'. *Global Trade and Customs Journal*, Vol. 2 No.11/12, pp.385-391
- Bown, C.P. & Hoekman, B.M. (2005) 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector'. *Journal of International Economic Law* Vol. 8 No.4, pp.861
- Bank of Zambia (2013) *Zambian Direction of Trade, Fourth Quarter Report*. Lusaka: Bank of Zambia Reports.
- Buyonge, C. & Kireeva, I. (2008) 'Trade Facilitation Challenges and Possible Solutions', *World Customs Journal*, Vol.1, No.1, pp. 41-54.
- Cattai, M.L. (2003) 'The importance of Trade Facilitation to Business' In: Cosgrove-Sacks, C. & Apostolov, M. (eds.) *TRADE FACILITATION: The Challenges for Growth and Development*: United Nations, Geneva and New York. pp. 183-188
- Collier, P. (2008) *The Bottom Billion – why the poorest Countries are failing and what can be done about it*. Oxford University Press
- Common Market for Eastern and Southern Africa (2013), *Report of the twenty-ninth Meeting of the Trade and Customs Committee 24th -27th June*. Kampala: COMESA.
- Creskoff, S. (2008) 'Trade Facilitation: An Often Overlooked Engine of Trade Expansion'. *Global Trade and Customs Journal*, Vol.3, No.12, 2008, pp. 149-162
- De Boeck, L. (2013) *Integrated Border Management Strategy for Democratic Republic of Congo*. Available at http://www.drcongo.iom.int/sites/default/files/pdf/strategies/border_management_strategy.pdf .
- accessed on 07/31/2014.
- Doyle, T. (2011) 'The Future of Border Management' In: McLinden, G., Fanta, E., Widdowson, D., & Doyle, T. (eds.) *Border Management Modernization*: World Bank Washington D.C. pp. 11-22

Du Plessis, A. (2014) Course Notes: University of Cape Town; Graduate School of Business. Western Cape, South Africa.

ECA (2004) '*Trade Facilitation to Integrate Africa Into the World Economy*', Economic Report for Africa 2004, Chapter 5: 155-189

ECA (2013) *Trade Facilitation from an African Perspective*, Addis Ababa, Ethiopia

Erasmus, G. (2013) '*Governance, trade and statehood in Africa*. Stellenbosch: Tralac.

Erasmus, G. (2014) Course Notes: University of Cape Town; Graduate School of Business. Western Cape, South Africa.

Gerring, J. (2008) 'Case Selection for Case Study Analysis: Qualitative and Quantitative Techniques' In: Box-Steffensmeier, J.M., Brady, H.E., & Collier, D. (eds.) *The Oxford University Handbook of Political methodology*: Oxford University Press: Oxford. pp. 645 - 684.

Grainger, A. (2008) 'Customs and Trade Facilitation: From Concepts to Implementation', *World Customs Journal*, Vol.1, No.1, pp. 17-30

Grainger, A. (2011) 'Developing the Case for Trade Facilitation in Practice', *World Customs Journal*, Vol.5, No.2, pp. 65-75.

Grynberg, R. & Motswapong, M. (2012) 'Competition and Trade Policy: The case of Botswana Poultry Industry', Botswana Institute for Development and Policy Analysis.

Hay, C. (2002) *Political Analysis: A critical introduction*. Basingstoke: Palgrave Macmillan.

Hellqvist, M. (2003) 'Trade Facilitation from a Developing Country Perspective' Stockholm: Sweden

Hoekman, B.M. & Shepherd, B. (2013) Who Profits From Trade Facilitation Initiatives? EUI, Working Paper RSCAS 2013/49 Robert Schuman Centre for Advanced Studies Global Governance Programme-55

Hummel, D. (2001) 'Time as Trade Barrier' Working Paper, Purdue University, West Lafayette/Indiana.

ITC (2013) WTO Trade Facilitation Agreement: A Business Guide for Developing Countries, Geneva, Switzerland.

Kanyimbo, P. (2013) Trade Facilitation in the Bali Package: What is in it for Africa? European Center for Development Policy management Briefing Note No.61

Kassee, D. (2014) 'The WTO Agreement on Trade Facilitation: status of play in Southern African Customs, *World Customs Journal*, Vol.8, No.1, pp.101-112.

Keyser, J. (2012) Counting the cost of Compliance with Trade Requirements from a Value Chain Perspective: Evidence from Southern Africa, *Africa Trade Policy Notes* No. 32

Lamy, P. (2003) 'Trade Facilitation in the new world trade environment' In: Cosgrove-Sacks, C. & Apostolov, M. (eds.) *TRADE FACILITATION: The Challenges for Growth and Development*: United Nations, Geneva and New York. pp. 144-146

Mackay, A. (2008) Border Management and Gender. *Gender and Security Sector Reform Toolkit*. Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW. Available at <http://www.dcaf.ch/publications/Border-Management-and-Gender-Tool-6>. Accessed on 08/06/2014

Mangeni, F. (2014) 'Comesa is using innovative technologies to break barriers in regional trade'. The Daily Nation, 13th August 2014. <http://mobile.nation.co.ke/blogs/-innovative-technologies-barriers-regional-trade/-/1949942/2417718/-/format/xhtml/-/5h5a8bz/-/index.html>. Accessed on October, 7th 2014

McNabb, D.E. (2004) *Research methods for political science: Quantitative and Qualitative Methods*, London: M.E.Monk.

Mikuriya, K. (2003) 'The Challenges of Facilitating the Flow of Commerce in a Heightened Security Environment' In: Cosgrove-Sacks, C. & Apostolov, M. (eds.) *TRADE FACILITATION: The Challenges for Growth and Development*: United Nations, Geneva and New York. pp. 152-157

Mulenga, K. (2012) 'Zambia, DRC to ease Kasumbalesa border traffic'. *The Zambia Daily Mail*. 1st October 2012. <http://www.trademarksa.org/news/zambia-drc-ease-kasumbalesa-border-traffic> [accessed on 07/06/2014]

Mupeseni, K. (2013) 'Address Cross Border Hurdles – World Bank'. *The Times of Zambia*. 20th September 2013. <http://www.allafrica.com/stories/201309200520.html>

[Accessed on 08/08/2014]

Musta, M.A. (2011) 'Border Management Modernization and the Trade Supply Chain' In: McLinden, G., Fanta, E., Widdowson, D., & Doyle, T. (eds.) *Border Management Modernization*: World Bank D.C pp. 22-36

Ngo'na, S. & Dube, C. (2012) *Aid for Trade and Economic Development: A Case Study of Zambia*, CUTS International, Jaipur, India.

Nsingo, E. (2014) 'Conflict threatens regional trade at the Zambia Congo DR border of Kasumbalesa'. *Inter-Agency Press Service*. 21st February 2014.

<http://www.ipsnews.net/2014/02/conflict-drc-zambia-border-threat-regional-trade/>

[accessed on 08/08/2014]

OECD (2005) *The Economic Impact of Trade Facilitation*: OECD Trade Policy Paper Working Paper No. 21, Paris.

OECD (2009) *Overcoming Border Bottlenecks, the Cost and Benefits of Trade Facilitation*, OECD Trade Policy Studies, Paris.

OECD (2013) *OECD Trade Facilitation Indicators: The potential Impact of Trade Facilitation on Developing Countries' Trade*, OECD Trade Policy Working Paper No. 144, Paris.

OECD (2014) *The WTO Trade Facilitation Agreement – Potential Impact on Trade Costs*. OECD Trade and Agriculture Directorate, Paris.

Pearson, M. (2011) *Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area*: Trade Mark Southern Africa

Piermartini, R. (2004). The Role of Export Taxes in the field of Primary Commodities. Available at www.wto.org/english/res_e/booksp_e/discussion_papers4_e.pdf accessed on 9/25/2014

Radelet, S. & Sachs, J.D. (1998) '*Shipping Costs, Manufactured Exports and Economic Growth*. Cambridge Massachusetts: Harvard International Institute for Development, Harvard University.

Rippel, B. (2011) '*Why Trade Facilitation is Important for Africa*', Africa Trade Policy Notes No. 27, Published by the World bank, Washington D.C. November 2011

Sally, R. (2013) 'It is Time for a Twenty-First Trade Policy' *The Wall Street Journal*. 28th May, 2013. p.11.

SADC (2011) 'Draft SADC Guidelines for Coordinated Border Management: a practical guide on best practices and tools for implementation, August 2011', Accessed on 02/21/2014, www.sadc.int/files/7613/7415/0086/SADC_Coordinated_Border_Management_Guidelines_-_Aug_2011.pdf.

Schafer, G. (2003) 'How to make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country strategies' Paper Presented at ICTSD conference. http://www.ictsd.org/pubs/ictsd_series/resource_papers/DSU_2003.pdf

[Accessed on 08/12/2014]

Shayanowako, P. (2013) '*Study into the Cooperation of Border Agencies in Zimbabwe*'. Stellenbosch: tralac.

Swedish National Board of Trade (2009) *Trade Facilitation and Maritime Transport: The development agenda*. Stockholm: Sweden.

Syampeyo, Y. (2014) 'State Ponders Beefing Up Security at Kasumbalesa' *The Zambia Daily Mail*. 13th April 2014. <https://www.facebook.com/ZAMBIA.DAILY.MAIL/posts/650628885031128> [accessed on 06/06/14]

UNCTAD (2010) Emerging Challenges and Recent Developments Affecting Transport and Trade Facilitation, Geneva: (TD/B/C.I/MEM.1/8)

Widdowson, D. (2003) 'Interventions by Exceptions: A study of the use of Risk Management by Customs Authorities in the Interventional Trading Environment.' University Canberra, Canberra.

Widdowson, D. (2005) '*International Trade Facilitation: The customs Imperative*'. Presentation to the APEC Workshop on the WTO Trade Facilitation Negotiations, Kuala Lumpur

World Bank (2010) Diagnostic Trade Integration Study for Congo Democratic Republic, Poverty Reduction and Economic Management Department 3 Africa Region

World Bank (2014a) *Doing Business* 2013 Report: The World Bank Group, Washington, DC.

World Bank (2014b) Zambia Economic Brief: Promoting Trade and Competitiveness: What can Zambia *Do*? The World Bank Group, Washington, DC.

Zambia Revenue Authority (2014) *the 18th Annual Report*. Lusaka, Lusaka: Author.

Appendix I



To Whom It May Concern;

This serves to introduce a questionnaire for purposes of studying Trade Facilitation at Kasumbalesa border Post. This study is one of the requirements needed for completion of a Master's in Commerce specializing in Trade Law and Policy.

The aim of the research is to improve trade facilitation at the border in order to enhance Zambia's trading prospects which in turn could lead to better economic performance.

An Institutional Review Board responsible for human subject's research at the University of Cape Town reviewed this research project and found it to be acceptable.

You may refuse to participate in this study without penalty or loss of benefits. If you are an employee of any organization, your decision to participate will not affect your employment status. In addition, efforts will be made to keep your study-related information confidential. Further, your choice to participate in the study is voluntary and you may discontinue participation at any time without sanctions.

This questionnaire will take less than an hour to complete and you may be required to supply identifiable information. Nonetheless, in order to ensure anonymity of your responses, this will be treated in strict confidence.

By signing this form, you do not give up any personal legal rights you may have as a participant in this study.

Should you have any questions with regard to the research please contact the undersigned.

Yours Faithfully,

Moses Mfune (Mobile +260 97 777 6357 Email: mosesmfune@yahoo.com)

Researcher

Part I: Profile of Respondent

Name of Respondent:

Age Range:

- a) 20-30
- b) 30-40
- c) 40-50
- d) 50-60
- e) Over 60

Rank:

Number of Years in the position:

Previous Rank:

Gender: Male () Female ()

Part II: Trade Facilitation Issues at Kasumbalesa Border Post

1. What frustrations have you experienced this week at the border post? Are these frustrations typical? Do you think other people experience these frustrations as well? Is it possible to give some examples?
2. How easy is it to trade in agricultural products such as maize and maize meal at this border post? Are there any specific challenges that you could highlight?
3. The Government agencies on both sides of the border have specific requirements in terms of documentation and procedures needed for cross-border trade. Do you find any differences in the specific requirements between the two border posts? Can you highlight some variations in the border authority's requirements?
4. How easy is it to obtain and submit documentation required for cross border trade at the border post? Do you face any challenges in obtaining some or all of the documents required to conduct cross border trade?
5. How do changes in border regulations affect your cross-border activities? Do you have any suggestion with regard to the best way of implementing rules that bring changes to the cross-border trade?
6. How do you respond to situations when a customs decisions do not meet your criteria of impartiality? Are there any options to pursue in the event you are not satisfied with a decision made by customs authorities at the border? Do such options work?

7. How competent are the border authorities and the Customs Brokers at executing their day-day responsibilities? Do the officials exhibit sufficient capacity to manage the border post or not? Can you cite any examples of good competence or lack of it?

8 How regular are extra-judicial payments at the border? Do such payments affect the rate of cargo movements at the border post? How best can corruption be dealt with in the border areas?

9 Does the multiplicity of Government agencies affect the rate of flow of cargo across the border post? If so how? Can you identify any pieces of legislation/regulations that in your view are an impediment to cargo movements between Zambia and Congo?

Signed:

Date

Researcher:

Date